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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 231.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

THE NASHVILLE, CHATTANOOGA AND SAINT LOUIS RAILWAY COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED MAY 31, 1883.

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a UNITED STATES OF AMERICA:

The President of the United States to the judges of the circuit court of the United States for the middle district of Tennessee, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between the United States and the Nashville and Chattanooga and St. Louis Railway Company, a manifest error hath happened to the great damage of the said United States as by his complaint appears, we being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be there given that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on 8th day of October next in the said Supreme Court to be there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further
b to be done therein to correct the error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison T. Waite, Chief-Justice of the said Supreme Court, the day of April, in the year of our Lord one thousand eight hundred and eighty-three.

LEWIS T. BAXTER, *Clk*,
Clerk of the Circuit Court of the United States,
for the Middle District of Tennessee.

Approved and allowed.

JNO. BAXTER, *Circuit Judge, &c.*

(Indorsed:) United States vs. N. & C. & St. L. R. Co. Writ of error. Filed May 2, '83. Chas. Nash, D. C.

c *Citation.*

UNITED STATES OF AMERICA:

To the Nashville and Chattanooga and St. Louis Railway Company, whose president is James D. Porter, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the middle district of Tennessee, wherein the United States is plaintiff and you, the said railway company, are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison T. Wait, Chief-Justice of the Supreme Court of the United States, this day of April, in the year of our Lord one thousand eight hundred and eighty-three.

JNO. BAXTER,
Judge of the 6th Judicial Circuit of the United States.

d (Indorsed:) United States vs. N. and C. R. R. Co. Writ of error & citation. Filed May 2, '83.

We accept service of the citation this May 16, 1883.

EAST & FOGG,
Att'ys for Defendant.

1 Circuit Court of the United States, middle district of Tenn. October term, 1880.

UNITED STATES
vs. } 2531.
N., C. AND ST. L. RY.

Declaration.

The United States of America, by James A. Warder, their attorney, complain of the Nashville, Chattanooga and St. Louis Railway, a body corporate, chartered originally under the name of the Nashville and Chattanooga Railroad Company by the legislature of Tennessee, whose principal office is in the county of Davidson, middle district of Tennessee, who has for its principal officer James D. Porter, who is in court by summons, to answer the plaintiff in a plea that they render unto the plaintiffs the sum of three hundred thousand dollars which they owe the plaintiffs and from them unjustly detain, for that whereas heretofore, to wit, on the first day of July, 1851, the Nashville and Chattanooga Railroad Company, being legally authorized and empowered so to do, did, on the day and date above written, under the seal of the corporation and signature of the president, did make, sign, seal, and execute and deliver (among other bonds) 391 bonds and covenants, numbered respectively as follows: 11 to
2 30, both inclusive; 61; Nos. 72 to 81, both inclusive; 103, 113, 114; No. 115 to 429, both inclusive; No. 439 to 600, both inclusive, Class A, by each of which they undertook, covenanted, and agreed that they owed the State of Tennessee one thousand dollars lawful money of the United States, which sum the Nashville and Chattanooga Railroad Company promised to pay to the State of Tennessee, or assigns, thirty years after date, with interest at the rate of six per cent. per annum, in like lawful money of the United States of America, payable semi-annually on the first days of January and July in each year until the payment of the principal sum, at the Phœnix Bank, city of New York, on the presentation and delivery of the coupons hereto annexed, at which place the principal sum shall be redeemed upon presentation and delivery of the bond at its maturity; the same being done in pursuance of an order of the stockholders made on the 24th day of January, 1848, to each of which said bonds coupons in the words and figures following, to wit, "Cashier of the Phœnix Bank, New York, pay to bearer thirty dollars, it being half year's interest due ———, on bond No. ——, of Nashville and Chattanooga Railroad Company. (Signed) V. K. Stephenson,
3 president," were annexed and attached for the payment of the semi-annual instalment of interest as the same should fall due, which said bonds and coupons attached so made and executed were delivered to the State of Tennessee, when, on the first day of September, 1851, William Trousdale, governor of the State of Tennessee, under his signature and the great seal of the State of Tennessee, being fully authorized and empowered by law so to do, did, in the name and in the behalf of the State of Tennessee, endorse and guarantee to bearer the payment of the interest and principal of the bonds according to the stipulation on the face of the same, and the plaintiffs aver that the Nashville and Chattanooga Railroad Company did not well and truly perform its covenant in this: that it did fail to pay the semi-annual interest on each and all of said 391 bonds from

the first day of January, 1861, to the first day of January, 1866, both inclusive; and the plaintiffs being the lawful owner and holder of said coupons for the interest on said bonds from the first day of January, 1861, to January 1st, 1866, the same here to the court shown. Yet the said defendant' though often requested so to do, have not paid to the said
4 plaintiffs the said sum as due by said coupons or any part thereof, but neglects and refuses to pay the same; wherefore cause of action hath accrued to the plaintiffs for the several amounts due on said coupons, together with the interest thereon from the dates of their respective maturity; hence this suit.

2' count. And the plaintiffs further complain of defendants for that whereas heretofore, to wit, on the first day of July, 1852, the Nashville and Chattanooga Railroad Company, being legally authorized and empowered so to do, did, on the day and date above written, under the seal of the corporation and the signature of the president, make, sign, seal, and deliver (among other bonds) 121 bonds and covenants, numbered, respectively, from 1 to 121, both inclusive, "Class B," by each of which they undertook, covenanted, and agreed that they owed the State of Tennessee one thousand dollars lawful money of the United States, which sum the Nashville and Chattanooga Railroad Company promised to pay to the State of Tennessee or assigns, thirty years after date, with interest at the rate of six per cent. per annum, in like lawful money of the United States of America, payable semi-annually on the first days of January and
5 July in each year until the payment of the principal sum, at the Phœnix Bank, city of New York, on the presentation and delivery of the coupons hereto annexed, at which place the principal sum shall be redeemed upon presentation and delivery of the bond at its maturity, the same being done in pursuance of an order of the stockholders made on the 9th of December, 1851, to each of which bonds coupons in the words and figures following, to wit, "Cashier of Phœnix Bank, New York, pay to bearer thirty dollars, it being a half year's interest due on bond No. , of Nashville and Chattanooga Railroad Company. (Signed) V. K. Stephenson, pres't," were annexed and attached for the payment of the semi-annual interest as the same should fall due, which bonds and coupons attached, so made and executed, were delivered to the State of Tennessee, when, on the 5th day of October, 1852, William B. Campbell, governor of the State of Tennessee, under his signature and the great seal of the State of Tennessee, being fully authorized and empowered by law so to do, did, in the name and in behalf of the State of Tennessee, endorse
6 and guarantee to bearer the payment of the interest and principal of the bond according to the stipulation on the face of the same, and the plaintiffs aver that the Nashville and Chattanooga Railroad Company did not well and truly perform its covenant, but did fail to do so in this, that they did fail to pay the semi-annual interest on each of said one hundred and twenty-one bonds which had accrued from the first day of January, 1861, to Jan'y 1st, 1866 (both inclusive); and the plaintiffs being the lawful owner and holder of said coupons for the interest on said bonds from the 1st day of January, 1861, to the 1st day of January, 1866, the same are here to the court shown. Yet the said defendants, although often requested so to do, have not paid to the plaintiffs the sum of money as due by said coupons, or any part thereof, but neglects and refuses to

pay the same; wherefore a cause of action hath accrued to the plaintiffs for the several amounts due on said coupons, together with interest thereon from their respective maturity; hence they sue.

3d count. And the plaintiffs further complain of the defendant for that whereas heretofore, to wit, on the first day of July, 1851–1852, the Nash-
ville and Chattanooga Railroad did undertake, promise, and agree
7 that on the first day of July, 1861, Jan'y & July, 1862, 1863, 1864,
1865, and the first day of January, 1866, they would well and truly pay to the plaintiffs the sum of fifteen thousand three hundred and sixty dollars (15,360); in all the sum of $153,600.00. Yet the said defendants have wholly failed to pay said sums of money, although often requested so to do; wherefore a cause of action hath accrued to the plaintiff to recover of the defendant said several sums of money, with interest thereon from the dates they were respectively ; hence they sue.

4' count. And the plaintiffs further complain of the defendants for that whereas heretofore, to wit, on the first day of July, 1851 & 1852, the Nashville & Chattanooga Railroad Company, through V. K. Stephenson, their president, who was lawfully authorized so to do, did execute, sign, and deliver 512 certain coupons, which are here to the court shown, by which they undertook, covenanted, and agreed that on the first day of July, 1861, they would pay to the bearer at the Phœnix Bank, in New
York City, the sum of thirty dollars each, in all the sum of
8 ($15,360.00) fifteen thousand three hundred and sixty dollars;
wherefore a cause of action hath accrued to the plaintiff to recover of the defendant the said sum of money and interest thereon; hence they sue.

5' count. And the plaintiffs further complain of the defendant for that whereas heretofore, to wit, on the 1st day of July, 1851 & 1852, the Nashville & Chattanooga Railroad Company, through V. K. Stephenson, their president, who was lawfully authorized so to do, did execute, sign, and deliver 512 certain coupons, here to the shown, by which the defendant undertook, covenanted, and agreed that on the first day of January, 1862, they would pay to the bearer, at the Phœnix Bank in New York City, the sum of thirty dollars each, in all the sum of fifteen thousand three hundred and sixty dollars, it being a semi-annual installment of interest on mortgage bonds issued by them, and the plaintiffs, although they are the owners and holders of said coupons, that the defendants have not
paid the same or any part thereof, but fail and refuse to pay the
9 same, although often requested to pay the same; wherefore a cause
of action hath accrued to the plaintiffs to recover of the defendants the sum of 15,360.00, together with the interest thereon; hence they sue.

6' count. And the plaintiffs further complain of the defendants, for that whereas heretofore, to wit, on the 1st day of July, 1851 & 1852, the Nashville & Chattanooga Railroad, through V. K. Stephenson, their president, who was lawfully authorized so to do, did execute, sign, and deliver 512 certain coupons, here to the court shown, which they undertook, covenanted, and agreed that on the first day of July, 1862, they would pay to the bearer, at the Phœnix Bank, in New York City, the sum of thirty dollars on each, in all the sum of 15,360.00, it being a semi-annual installment of interest on mortgage-bonds issued by them; and the plaintiffs

aver, although they are the owners and holders of said coupons, the defendants have not paid the same, or any part thereof, but fail and refuse to pay the same, although often requested so to do, wherefore a cause of action hath accrued to the plaintiff to recover of the defendant said
10 sum of 15,360.00, and the interest thereon; hence they sue.

7' count. And the plaintiffs further complain of the defendant for that whereas heretofore, to wit, on the 1st of July, 1851 & 1852, the Nashville & Chattanooga Railroad, through V. K. Stephenson, their president, who was lawfully authorized so to do, did execute, sign, and deliver 512 certain coupons, which are here to the court shown, by which they undertook, covenanted, and agreed that on the first day of Jan'y, 1863, they would pay to bearer the sum of thirty dollars each, at the Phœnix Bank, in New York City, in all the sum of 15,360.00; and the plaintiffs aver, although they are the owners and holders of said coupons, the defendants have not paid the same although often requested so to do; wherefore a cause of action hath accrued to the plaintiffs to recover of the defendant the sum of 15,360.00, together with the iterest thereon; hence they sue.

8' count. And the plaintiffs further complain of the defendant for that whereas heretofore, to wit, on the first day of July, 1851 and 1852, the Nashville & Chattanooga Railroad, through V. K. Stephenson,
11 their president, who was lawfully authorized so to do, did execute, sign, and deliver 512 certain coupons, which are here to the court shown, by which they undertook, covenanted, and agreed that on the 1st day of July, 1863, they would pay to bearer, at the Phœnix Bank, in New York City, the sum of thirty dollars on each, in all the sum of 15,360.00, it being a semi-annual installment of interest on mortgage bonds issued by them; wherefore a cause of action hath accrued to them to recover of the defendant the sum of 15,360.00, and the interest thereon; hence they sue.

9' count. And the plaintiffs further complain of defendants for that whereas heretofore, to wit, on the first day of July, 1851 & 1852, the Nashville & Chattanooga Railroad, through V. K. Stephenson, their president, who was lawfully authorized so to do, did execute, sign, and deliver 512 certain coupons, here to the court shown, by which they undertook, covenanted, and agreed that on the first day of January, 1864, they would pay to bearer, at the Phœnix Bank, in the city of New York, the
12 sum of thirty dollars on each, in all the sum of 15,360.00, it being a semi-annual installment of interest on mortgage bonds issued by them. And the plaintiffs aver that although they are the owners and holders of said coupons, the defendants have not paid the same, or any part thereof, but failed and refused to pay the same; wherefore a cause of action hath accrued to the plaintiff to recover of the defendants the sum of 15,360.00, together with the interest thereon; hence they sue.

10th count. And the plaintiffs further complain of the defendants for that whereas heretofore, to wit, on the 1st day of July, 1851 & 1852, the Nashville & Chattanooga Railroad, through V. K. Stephenson, their president, who was lawfully authorized so to do, did execute, sign, and deliver 512 certain coupons, which are here to the court shown, by which they undertook, covenanted, and agreed that on the first day of July, 1864, they would pay to bearer, at the Phœnix Bank, in New York City, the sum of

thirty dollars on each, in all the sum of 15,360.00, it being a semi-annual installment of interest on mortgage bonds issued by them, and the
13 plaintiffs aver that although they are the owners & holders of said coupons, the defendant has not paid the same, or any part thereof, although often requested so to do; wherefore a cause of action hath accrued to the plaintiffs to recover of the defendants the sum of 15,360.00, together with the interest; hence they sue.

11th count. And the plaintiffs further complain of the defendant for that whereas heretofore, to wit, on the 1st day of July, 1851 & 1852, the Nashville & Chattanooga Railroad, through V. K. Stephenson, their president, who was lawfully authorized so to do, did execute, sign, and deliver 512 certain coupons, which are here to the court shown, by which they undertook, covenanted, and agreed that on the 1st day of Jan'y, 1865, they would pay to bearer, at the Phœnix Bank, in New York City, the sum of thirty dollars each—in all, the sum of $15,360.00—it being a semi-annual installment of interest on mortgage bonds issued by them; and the plaintiff avers that although they are the owners and holders of said coupons, that the defendant has not paid the same, or any part thereof, although often requested so to do; wherefore a cause of action
14 hath accrued to the plaintiffs to recover of the defendant the sum of 15,360, together with the interest thereon; hence they sue.

12' count. And the plaintiffs further complain of the defendant for that whereas heretofore, to wit, on the 1st day of July, 1851 & 1852, the Nashville & Chattanooga Railroad Co., through V. K. Stephenson, their president, who was lawfully authorized so to do, did execute, sign, and deliver 512 certain coupons, which are here to the court shown, by which they undertook, covenanted, and agreed that on the first day of July, 1865, they would pay to bearer, at the Phœnix Bank, in New York City, the sum of thirty dollars each—in all the sum of 15,360—it being a semi-annual installment of interest on mortgage bonds issued by them; and the plaintiffs aver that although they are the owners and holders of said coupons, the defendant has not paid the same, or any part thereof, although often requested so to do; wherefore a cause of action hath accrued to the plaintiffs to recover of the defendants the sum of 15,360.00, together with the interest thereon; hence they sue.

15 13' count. And the plaintiffs further complain of the defendant for that, whereas heretofore, to wit, on the first days of July, 1851 & 1852, the Nashville & Chattanooga Railroad Company, through V. K. Stephenson, its president, who was lawfully authorized so to do, did make, execute, and deliver 512 certain coupons, which are here to the court shown, by which they undertook, covenanted, and agreed that on the first day of January, 1866, they would pay to bearer, at the Phœnix Bank, in New York City, the sum of (30) thirty dollars each—in all the the sum of 15,360; and the plaintiff avers that although they are the owners and holders of said coupons, the defendant has not paid the same, or any part thereof, although often requested so to do; wherefore a cause of action hath acrued to the plaintiff to recover of the defendant the sum of 15,360.00, together with the interest thereon; hence they sue.

14' count. And the plaintiffs further complain of the defendant for that whereas heretofore, to wit, on the first day of July, 1851, the Nashville

and Chattanooga Railroad Company, through V. K. Stephenson, who was lawfully authorized so to do, did execute, sign, and deliver one
16 coupon annexed to bond No. 500, Class "A," by which they undertook, promised, and agreed that on the first day of July, 1863, at the Phœnix Bank, in New York City, they would pay to bearer thirty dollars, and also on the first day of July, 1852, did execute, sign, and deliver one each attached to bonds 90 & 95, Class "B," by which they undertook, covenanted, and agreed that on the first day of January, 1863, they would pay to bearer the sum of thirty dollars on each, at the Phœnix Bank, in the city of New York; said coupons are not to the court shown because they have been unintentionally lost or mislaid so that they cannot be produced (and affidavit substituted therefor), and the plaintiffs aver, although they are the owners and holders of said coupons, that the defendants have not paid the same, or any part thereof, although often requested so to do; wherefore a cause of action hath accrued to the plaintiffs to recover of the defendant the said sums, together with the interest thereon; hence they sue.

17 And the plaintiffs aver that by charter amendment the corporate name of the Nashville and Chattanooga Railroad Company has been changed to the Nashville, and Chattanooga and St. Louis Railway, the latter being subject to all the liabilities of the former; hence this suit.

JAMES A. WARDER,
U. S. Dist. Att'y.

James A. Warder makes affidavit that the three coupons described in the 14th count in the declaration are unintentionally lost or mislaid so that they cannot be produced; are still due and unpaid.

JAMES A. WARDER.

Subscribed & sworn to before me this July 8th, 1880.

E. R. CAMPBELL,
Com'r. U. S. Cir. Court.

Filed July 6th, 1880.

LEWIS T. BAXTER, *Cl'k.*

Summons s'd July 6th, '80.

The President of the United States of America to the marshal of the middle district of Tennessee, greeting:

You are hereby commanded to summon the Nashville, Chatta-
18 nooga and St. Louis Railway, a corporation organized under the laws of the State of Tennessee, if to be found in your district, to be and appear before the judges of the circuit court of the United States in the sixth circuit for the middle district of Tennessee at the Federal court-room at Nashville, in said State, on the third Monday in October next, then and there to answer the United States of a plea that it render unto the plaintiff the sum of $153,600.00, which it owes to and from plaintiff unjustly detains to plaintiff's damage $300,000.00.

Herein fail not, and have then and there this writ.

Witness the Hon'l Morrison R. Waite, Chief Justice of the Supreme

Court of the United States, this the 6th day of July, in the year of our Lord eighteen hundred & eighty & of the Independence of the United States the 105' year.

[SEAL.] LEWIS T. BAXTER,
Clerk.

(Endorsed:) Came to hand, day issued & ex'd on the 9th day of July, 1880, on James D. Porter, president of defendant, by making known to him the contents hereof and delivering to him copies of bill & spa. Edward S. Wheat, U. S. M.

19 *Pleas.—Filed Oct.* 20, '80.

UNITED STATES OF AMERICA
vs.
NASH., CHAT. AND ST. LOUIS RAILWAY.

The defendant comes and for plea to the plaintiff's declaration says that it did not promise as the plaintiff hath in its declaration alleged, and of this it puts itself upon the country.

EAST & FOGG, *Att'ys.*

And the plaintiff doth the like.

J. A. WARDER,
Dist. Att'y.

And for further plea to the plaintiff's declaration the defendant comes, by its att'ys, and says that it paid the debt or demand, for the recovery of which the suit is now brought, before the action was commenced, and of this it puts itself upon the country.

EAST & FOGG, *Att'ys.*

And for further plea to the plaintiff's declaration the defendant comes and says that heretofore and before the action was brought upon the coupons exhibited in the plaintiff's declaration, but at the time the plaintiff held the same, and after the same became due and payable to plaintiff by defendant, plaintiff and defendant had mutual debts & demands due and payable from each to the other including the debt, coupons now
20 sued on, and the same were submitted to litigation in this court. And heretofore on the 10th of November, 1871, the plaintiff & defendant, under said litigation, agreed to in writing in the form of a decree of this court, which was approved by plaintiff and defendant and the court, and entered upon the minutes thereof, as follows, by which agreement and writing the plaintiff agreed to have and take of defendant, "in full settlement, satisfaction, and discharge of all mutual claims and accounts between the parties as they existed on the 1st day of June, 1871," the sum of one million of dollars in the coupon mortgage bonds of defendant, which bonds were then and there delivered to plaintiff and by it accepted and now held, and upon the payment of which no default has been made; and the defendant avers that the coupons now sued on were a part of the claims due plaintiff from defendant on the 1st of June, 1871, and the defendant pleads said agreement and settlement in bar to the plaintiff's suit.

EAST & FOGG, *Att'ys.*

21 And for further plea to the plaintiff's declaration the defendant comes and says that after the making of the said several promises and undertakings, in the plaintiff's declaration mentioned, and after they became due and payable to plaintiff and before the present suit was commenced, to wit, on the 10th of November, 1871, the defendant made and delivered to plaintiff coupon bonds of defendant, amounting to one million of dollars, and bearing four per cent. per annum interest and secured by mortgage on defendant's road, and the same were then and there accepted by plaintiff, and are now held by it in full satisfaction and discharge of the said several promises and undertakings in the declaration mentioned, and of all damages and sums of money due, owing, or accrued thereon.

EAST AND FOGG, *Att'ys.*

Attest:
R. C. BRANSFORD.

Filed Oct. 20, '80.

LEWIS T. BAXTER, *Clerk.*

Demurrer.—Filed Oct. 23, '80.

U. S.
vs.
N. C. AND ST. L. RY.

22 The plaintiffs by their att'y demur to the first plea of the defendant, and allege as cause of demurrer that it is in effect a plea of non est factum and is not verified by affidavit.

2. That the plea is not sworn to as under the rules of the court is required.

And the plaintiffs demur to the second plea on the ground that it is not sworn to as under the rules of the court such pleas are required to.

And the plaintiff demurs to the third plea of defendant, and assigns as causes of demurrer—

1st. That the plea is not verified under the rules of the court.

2d. That the plea is not verified by the record.

3d. That the plea fails to allege that the coupons on which this suit was instituted was in suit and in issue in the case pleaded in said plea.

4th. That the plea fails to allege and show how, by whom, and under what all said agreement in writing was made.

5th. That the plea fails to allege and show how, when, and in what manner the jurisdiction of the court accrued.

And the plaintiff demurs to the 4th plea of the defendant, because not properly verified under the rules of the court; and they pray the court if they shall make any other or further defense thereto.

JAMES A. WARDER,
U. S. Att'y.

Filed Oct. 23, '80.

LEWIS T. BAXTER, *Clk.*

23 *Replication.—Filed Oct. 23, '80.*

UNITED STATES
vs.
NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY.

And for replication to the second plea of the defendants the plaintiffs say that the defendant did not pay the debt or demand in the declaration mentioned before the commencement of the action or at any other time, and of this they put themselves upon the country.

JAMES A. WARDER.
Att'y for Pl't'ff.

The defendant doth the like.

EAST & FOGG,
Att'ys.

And for replication to the third plea of defendant the plaintiffs say precludi non, because they say that the coupons, debt, and demand in the declaration mentioned were not submitted to litigation in the court in the manner and form as in said plea is pleaded, and of this they put themselves upon the country.

JAMES A. WARDER,
Att'y for pl't'ff.

The defendant doth the like.

EAST & FOGG,
Att'ys.

And for further replication under leave of the court first had and obtained the plaintiffs say precludi non, because they say that the plaintiffs did not agree to have and take of the defendant the sum of one
24 million dollars in the coupon bonds of the defendant, nor did the defendant deliver to the plaintiffs the said bonds in satisfaction of the debt or demand in the declaration mentioned, or any part thereof, and of this they put themselves upon the country.

JAS. A. WARDER,
U. S. Att'y.

The defendant doth the like.

EAST & FOGG,
Att'ys.

And the plaintiffs for further replication to the third plea of the defendant say precludi non, because they say that the debt and demands in the declaration mentioned were not involved in nor in issue, nor had this court any jurisdiction of the debts and demands in the declaration mentioned in any pleas or pleadings wherein the plaintiffs and defendant had impleaded with each other, and of this they put themselves upon the country.

JAS. A. WARDER,
U. S. Att'y.

The defendant doth the like.

EAST & FOGG,
Att'ys.

And the plaintiffs for further replication to the third plea of the defendant say precludi non, because they say that the debt and demand in the declaration mentioned was not a mutual demand subsisting
25 between the plaintiffs and defendant on the first day of Jan., 1871, and of this they put themselves upon the country.

J. A. WARDER,
U. S. Att'ys.

The defendant doth the like.

EAST & FOGG, *Att'ys.*

And the plaintiffs to the fourth plea of the defendant say precludi non, because they say that the defendant did not, on the 10' day of November, 1871, nor at any other time, make and deliver to the plaintiff coupon bonds of the defendant, amounting to one million dollars, and bearing four per cent. per annum interest, and secured by mortgage on defendant's road, which was accepted by the plaintiffs in full satisfaction and discharge of the several premises in the declaration mentioned, nor of the damages or sums of money accruing thereon, nor of any part thereof, and of this they put themselves upon the country.

J. A. WARDER,
U. S. Att'y.

The defendant doth the like.

EAST & FOGG, *Att'ys.*

Filed Oct. 23d, 1880.

LEWIS T. BAXTER, *Cl'k.*

26 *Affidavit of Jas. D. Porter*

Affiant, JAMES D. PORTER, says that he is the president of defendant' road, and says that the matters presented in this case arise upon and out of a lot of coupons issued by the R. R. Co., and are now held by the Government, which has brought suit upon the same; that these coupons matured during the war and before June 1st, 1871, and while the road of this company and its rolling stock was held and used by the plaintiff, and in the use and occupation of which the plaintiff continued for many years. Affiant further says that before the institution of this suit there was a compromise in settlement of all mutual claims. The same is here referred to as follows, in which the affiant has been informed by those then in charge of these matters: The claim now sued upon was included, and he now holds a construction of the agreement of compromise given by the Secretary of War, Hon'l George W. McCreary, which he files as a part hereof marked A. Affiant further says that recently he had a meeting with the present Secretary of the Treasury, Wm. Windom, and brought before
27 him the matters of this suit, and said Secretary agreed that he would look into the same as soon as he had the leisure to do so; but affiant has not been informed of his action.

Affiant further states that he intends to press the matter before the proper Department until the matter is fully determined, with all reasonable speed and diligence. Affiant further states that he was not connected with defendant corporation at the time these matters were settled or supposed to be settled by compromise, and personally knows nothing of them,

but he deems it essential to justice that the proper Department of the U. S. Government should act upon the matters now before it in regard to this suit before the same is tried in this court.

Affiant further states that on the 31st of May, 1881, he paid for his corporation to the U. S. Government $500,000, and is now ready to pay it the further sum of more than $400,000 on the 1st of July, 1881, and that he confidently hopes and expects when he shall have concluded those payments (which have occupied much of his time) that he will then procure a final decision from the Department in the matter of this suit. Affiant says that he has laid before the proper Department the claim
28 of defendant in this matter & behalf and the same is still pending, unacted on by said Department, so far as affiant is informed.

This is the first application for a continuance of this cause, and the same is asked not for delay but for justice.

JAS. D. PORTER.

Sworn to and subscribed before me this June 8, '81.

LEWIS T. BAXTER, *Clk.*

Filed June 9th, 1881.

Additional pleas.

UNITED STATES OF AMERICA
vs.
NASHVILLE & CHATTANOOGA RAILROAD COMPANY.

The defendant, by leave of the court first had and obtained so to do, comes and files an additional plea to the pleas heretofore entered to the plaintiff's declaration, and for such further plea says that the plaintiff, The United States, holds said coupons which it exhibits in its said declaration, not in its own right, as such Government of the United States, but
29 held and still holds the same as trustee for certain beneficiaries, viz, the Chickesaw Indians, a nation of people, and avers that the cause of action for which the original summons against this defendant was taken out, and which is exhibited in the plaintiff's said declaration, did accrue to the plaintiffs, as such trustee aforesaid, more than six years next before the plaintiff sued out its original summons in this cause, and exhibited the same against defendant, and this the defendant is ready to verify. Wherefore it the judgment, &c.

EAST AND FOGG,
Att'ys for Defendant.

The plaintiff joins issue on the foregoing plea.

A. McCLAIN,
U. S. Att'y.

And the defendant, by leave of the court first had and obtained in this behalf, comes and files an additional plea to the plaintiff's declaration, and for such plea says that the plaintiff, The United States, was the holder of the coupons in the plaintiff's declaration mentioned, and upon which it has brought this cause of action as trustee and not in its own right, from
30 Jan'y 10th, 1866, before which time all of said coupons became due and payable, and continued to hold the same as such trustee for the

Chickesaw Indians, a nation of people, until June 20th, 1878, at which last time the said United States ceased to hold the same as trustee and became the owner thereof in its own right, and the defendant says and avers that the cause of action accrued upon the same more than six years next before said June 20th, 1878, at which time the United States became the owner thereof as aforesaid in its own right. And this the defendant is ready to verify. Wherefore, &c.

EAST & FOGG,
Att'ys.

The plaintiff joins issue on the foregoing plea.

A. McCLAIN,
U. S. Dist. Att'y.

Filed April 23d, 1883.

CHAS. NASH,
D. Cl'k.

Demurrer.

UNITED STATES
vs.
NASHVILLE, CHATTANOOGA & ST. LOUIS R.R. Co.

The plaintiff comes by its attorney and demurs to def't's first additional plea, setting up the statute of limitations of six years as a
31 bar to plaintiff's action, and for cause of demurrer says:

1st. That the plaintiff is a sovereign whose right of action is not barred by reason of the said statute of limitation and to whom said statute has no application.

A. McCLAIN, *U. S. Atto.*

UNITED STATES
vs.
NASHVILLE & CHATTANOOGA & ST. LOUIS Railway Co.

The plaintiff comes and demurs to the defendant's second plea of the statute of limitations and for cause of demurrer says that the plaintiff is a sovereign to whom the statute of limitations pleaded has no application and does not bar the plaintiff's action.

A. McCLAIN, *U. S. Atty.*

Filed Ap'l 23d, 1883.

CHAS. NASH, *D. C.*

Replication.

UNITED STATES
vs.
N. C. AND ST. L. RY.

32 The plaintiff for replication to the defendant's first and second plea of the statute of limitations says that the plaintiff became the holder of all the coupons (and of the bonds to which they were attached) sued on in this action before the coupons or any of them became due and

payable, and before the said bonds to which the said coupons were attached became due and payable, and has continued to hold the said coupons till the present time, and continued to hold said bonds till their maturity and payment. And this it is ready to verify.

A. McCLAIN, *U. S. Att'y.*

And the plaintiff for a further replication to defendant's two pleas of the statute of limitations of six years by leave of the court first had and obtained says precludi non, because it says that the State of Tennessee, to which said bonds were made payable, to which said coupons (sued on in this action) were attached, did through certain governors of said State, under the provisions of a law of said State, endorse said bonds to bearer, and the plaintiffs became the holders by and under said endorsement of said bonds with the coupons attached thereto, meaning the coupons sued on in
33 this action long before said bonds and coupons or any of them became due and payable, and without the intervention of any other holder between the State of Tennessee and the plaintiff; and the plaintiff acquired and continued to hold said bonds for the Chickesaw Indians under the provisions of a treaty made and concluded between the plaintiffs and the said Chickesaw Indians, who were then and are an independent nation of people, on the 20 Oct., 1832, and also under the provisions of another treaty made and concluded between the same parties on 24 day of May, 1834, and plaintiffs continued to hold said bonds and coupons under another treaty made & concluded between the same parties on the 22d day of June, 1852, and also under another treaty made and concluded between the same parties on the 28th day of April, 1866, and the Congress of the United States having passed an act which was, on the 20 day of July, 1878, approved by the President, making appropriation to pay out of the Treasury of the United States the face value of the coupons sued on in this action, without interest on the same, the said amount has been paid to said nation of In-
34 dians before the commencement of this suit under the provisions of said act of Congress, and the plaintiff still holds said coupons and has never at any time parted with the custody and possession of the same from the time of its acquisition of the same as aforesaid till the present time.

And this the plaintiff is ready to verify.

A. McCLAIN,
U. S. Dist. Att'y.

Filed Ap'l 23, '83.

LEWIS T. BAXTER, *Clk*,
By CHAS. NASH, *D. C.*

Demurrer.

UNITED STATES OF AMERICA
vs.
NASHVILLE & CHATTANOOGA RAILROAD COMPANY.

The defendant comes and demurs to the plaintiff's replication to the first plea of the statute of limitations filed this day, and for cause says that

said plea set out the fact that the plaintiff held said coupons as trustee for the Chickesaw Indians and not in its own right, and hence it pleads the statute of limitations of 6 years, while plaintiff in its said replication neither
35 admits or denies said fact or sets up no new matter in evidence, but simply asserts that the United States held said bonds & coupons, and the defendant prays judgment of the court, &c.

EAST & FOGG, *Att'ys.*

Defendant comes and demurs to the second replication filed by plaintiff to defendant's second plea of the statute of limitations and says the same is not sufficient in this: it sets up no new matter in evidence, and denies no fact set out in defendant's said plea, but merely repeats the matters set out in said plea in detail; and hence the defendant prays.

EAST AND FOGG, *Att'ys.*

Filed Ap'l 23, '83.

LEWIS T. BAXTER, *Cl'k,*
By CHAS. NASH, *D. C.*

Replication.

UNITED STATES
vs.
NASHVILLE & CHATTANOOGA AND ST. LOUIS Railway Co.

The plaintiff for replication to deft's two pleas of the statute of limitations says precludi non, because it says that the statements are true
36 in this: that in fact the coupons sued on are the property of the plaintiff, and the plaintiff was the rightful holder and owner of said coupons sued on at the commencement of this suit, and this the plaintiff is ready to verify.

A. McCLAIN,
U. S. Att'y.

Filed Ap'l 23d, '83.

LEWIS T. BAXTER, *Cl'k,*
By CHAS. NASH, *D. C.*

Demurrer.

U. S.
vs.
NASHVILLE & CHAT. R. R. Co.

The defendant comes and demurs to plaintiff' replication to its two pleas of the statute of limitations and says the same is insufficient in law, because it says said replication neither admits or denies the matters pleaded in said two pleas, nor does it set up matters of avoidance, but merely asserts that plaintiff was the owner of the coupons sued on "at the commencement of this suit." And defendant prays the judgment of the court, &c.

EAST AND FOGG, *Atty's.*

37 *Bill of exceptions.*

In the circuit court of the United States for the middle district of Tennessee.

THE UNITED STATES
vs.
NASHVILLE, CHATTANOOGA AND ST. LOUIS Railroad Company

At a trial of this case, regularly had as shown in the record before the court and a jury, the plaintiff proved and the defendant admitted that in 1851 & 1852 it issued, by its then corporate name, three hundred and ninety-one bonds of the denomination of one thousand dollars each, series A, and one hundred and twenty-one bonds, series B, of the denomination of one thousand dollars each, which were in the following words, to wit:

[A] UNITED STATES OF AMERICA. [No. 198.]

[1000] *Prior mortgage bonds. Capital subcribed by stock holders* 2,063,000. [1000.]

With these bonds sufficient to finish the road 151 miles.

STATE OF TENNESSEE:

Know all men by these presents, that the Nashville and Chattanooga Railroad Company acknowledges to owe the State of Tennessee
38 one thousand dollars, lawful money of the United States of America, which sum the Nashville and Chattanooga Railroad Company promises to pay to the State of Tennessee or assigns, thirty years after date, with interest at the rate of six per cent. per annum, in like lawful money of the United States of America, payable semi-annually on the first days of January and July in each year, until the payment of the principal sum, at the Phenix bank, city of New York, on the presentation and delivery of the coupons hereto annexed, at which place the principal sum shall be redeemed upon presentation and delivery of this bond at its maturity.

In witness whereof, and pursuant to an order of the stockholders at their convention, held in the city hall of Nashville, on the 24' day of January, 1848, and recorded in the minutes of the company, a copy of which resolutions of said convention is here attached, and also a copy of the acts of the legislature of Tennessee authorizing and requiring the governor of the State of Tennessee to endorse and guarantee the payment of principal and interest of the bonds here issued on the
39 part of the State of Tennessee, I, V. K. Stevenson, president, have hereunto set my hand and affixed the seal of the corporation this first day of July, 1851.

V. K. STEVENSON,
President.
O. EWING, *Secretary.*

That said bonds were thereafter endorsed by the governor of Tennessee in the terms following, that is to say:

STATE OF TENNESSEE, EXECUTIVE OFFICE,
Nashville, September first, 1851.

Whereas the act of the legislature of Tennessee, passed in 1848, ch. 169, authorizes the governor of the State to endorse and guarantee in the name of the State of Tennessee the bonds of the Nashville and Chattanooga Railroad Company to an amount not exceeding $500,000, bearing interest at the rate of six per centum per annum, payable thirty years after date, upon certain conditions; and it having been shown to me that said conditions have been complied with so far as to authorize the endorsement and guarantee of said bonds to the extent of $250,000, in this, to wit, that said act requires the subscription of one million and a half of dollars, and that upwards of two millions have been subscribed; that said subscription has been adjudged valid and solvent by the board of internal improvement; that a verified statement of the president and a majority of the directors of said company has been made; that forty miles of said road has been completed and put in operation according to the true intent and meaning of said act of 1848, ch. 169, and that the proceeds of the bonds shall be applied to the extension of said road; and that the board of internal improvement have taken a lien on the whole stock of said road, and on the road and fixtures as put in operation for the indemnity of the State;

Now, therefore, I, William Trousdale, governor of the State of Tennessee, by virtue of the authority vested in me by the law aforesaid, do, in the name and in behalf of the State of Tennessee, endorse and guarantee to ——— ———, or bearer, the payment of the interest and principal of this bond, according to the stipulations on the face of the same, the said bond being one of the first issue of $250,000, as required by law.

In testimony whereof I have hereunto set my hand as governor and caused the great seal of said State to be affixed, at Nashville, this 1st September, 1851.

By the governor.

[SEAL.] W. TROUSDALE.

W. B. A. RAMSEY,
Secretary of State.

Whole cost of road equipped, $2,913,000; capital subscribed, $2,063,000; loans realized, $500,000, and authorized, $350,000.

[B] UNITED STATES OF AMERICA. [No. 1.]

[1000.] Mortgage Bonds. [1000.]

With these bonds sufficient to finish the road 150 miles and Shelbyville Branch, 8 miles long.

STATE OF TENNESSEE:

Know all men by these presents, that the Nashville and Chattanooga Railroad Company acknowledges to owe the State of Tennessee one thou-

sand dollars, lawful money of the United States of America, which sum the Nashville and Chattanooga Railroad Company promises to pay to the State of Tennessee or assigns, thirty years after date, with interest at the rate of six per cent. per annum, in like lawful money of the United
42 States of America, payable semi-annually on the first days of January and July in each year, until the payment of the principal sum, at the Phenix Bank, city of New York, on the presentation and delivery of the coupons hereto annexed, at which place the principal sum shall be redeemed upon presentation and delivery of this bond at its maturity.

In witness whereof and pursuant to an order of the stockholders at their convention, held at Murfreesborough on the 9th day of December, 1851, and recorded in the minutes of the company, a copy of which resolutions of said convention is here attached, and also a copy of the acts of the legislature of Tennessee authorizing and requiring the governor of the State of Tennessee to endorse and guarantee the payment of principal and interest of the bonds here issued on the part of the State of Tennessee, I, V. K. Stevenson, president, have hereto set my hand and affixed the seal of the corporation this 1st day of July, 1852.

V. K. STEVENSON,
President.
ORVILLE EWING,
Secretary.

43 (Endorsed:)

STATE OF TENNESSEE,
Executive Office, Nashville.

Whereas by the 18th section of an act passed by the legislature of said State on the 11th day of February, 1852, entitled "An act to establish a system of internal improvement in this State," the governor is authorized upon the completion of twenty-five miles of the Nashville and Chattanooga Railroad, in addition to the eighty miles required to be completed as provided for by an act of the 4th February, 1848, to endorse and guarantee in the name and on behalf of the State of Tennessee the bonds of the Nashville and Chattanooga Railroad Company to the amount of one hundred and seventy-five thousand dollars, and it having been satisfactorily shown to me that twenty-five additional miles of said road has been completed according to the provision of the said 18th section of the said act of 11th February, 1852—

Now therefore I, William B. Campbell, governor of the State of Tennessee, by virtue of the authority in me vested by the 18th section of the law aforesaid, and under the limitations and restrictions therein contained, do, in the name and in behalf of said State, endorse and guarantee
44 to , or bearer, the payment of the interest and principal of this bond according to the stipulations on the face of the same, this bond being one of the first issue of $175,000 under the 18th section of said law of 11th February, 1852.

In testimony whereof I have hereunto set my hand as governor and caused the great seal of said State to be affixed, at Nashville, this 5th October, 1852.

By the governor.

[SEAL.] W. B. CAMPBELL.

W. B. A. RAMSEY,
Secretary of State.

That each of said bonds had coupons attached for the semi-annual interest to accrue thereon in accordance with the stipulations contained in the face thereof in the following terms, that is to say:

[30] Cashier of the Phenix Bank, New York. [30]

Pay to bearer thirty dollars, it being a half-year's interest due 1st of July, 1881, on bond No. 198 of the Nashville & Chattanooga Railroad Co.

V. K. STEVENSON, *Pres.*

45 [30] Cashier of the Phenix Bank, New York. [30]

Pay to bearer thirty dollars, it being a half year's interest due 1st of July, 1882, on bond No. 1 of the Nashville & Chattanooga Railroad Company.

V. K. STEVENSON, *Pres.*

That thereafter, in 1852, the plaintiff, acting as trustee of the Chickasaw Indians, under and pursuant to the treaties of the 20th October, 1832, the 24th of May, 1834, and the 22d of June, 1852, purchased at said time in the year 1852 with said trust fund the said five hundred and twelve bonds, with the coupons thereto attached, and has ever since owned and held the same for the purpose of said trust until on or after the 20th July, 1878, when the plaintiff, in virtue of the act of Congress of that date, accounted with its cestu' que trust for the coupons sued on and interest thereon, since which time the United States has claimed title thereto in their own right. The coupons declared on and sued for in this action were produced by the plaintiff, admitted to be genuine, and were
46 read in evidence to the jury. It was further admitted that said coupons, which matured from July 1st, 1861, to 1st January, 1866, inclusive, were clipped from the aforesaid bonds, and that the same had never been paid. It was further proven and admitted that said bonds and coupons were 1st placed in the care of the Secretary of the Treasury, who held them under and by authority of law as part of said trust fund for said Indians until transferred to the Secretary of the Interior, under and pursuant to the act of the 27th July, 1868, and that they were in the care and custody of said Interior Department as such trust fund until after the 10th June, 1876, when pursuant to the act of Congress of that date they were turned over to the Treasurer of the United States who has ever since had the custody of them. It was also proved and admitted that the bonds from which the coupons sued for were clipped, together with all the coupons thereto attached maturing after the 1st day of Jan'y, 1866, were paid by defendant as they fell due. It was further admitted that the defendant had never supplied the Phenix Bank of New York, the bank at
47 which said coupons were upon their face made payable, with funds with which to pay the coupons sued for, or any of them.

This was all the evidence in the case material to the question hereinafter made.

The court instructed the jury that upon the foregoing facts the plaintiff's right of action was barred by the statute of limitations, to which the plaintiff then and there excepted.

The jury, in conformity with the foregoing instructions, returned a verdict for the defendant. Thereupon the plaintiff moved for a new trial, which motion the court disallowed and overruled.

The plaintiff thereupon tenders this his bill of exceptions, which, at plaintiff's request, is signed, sealed, and made a part of the record of th case.

JNO. BAXTER, [SEAL.]
U. S. Circuit Judge, &c.

Filed April 28, '83.

LEWIS T. BAXTER, *Clk*,
By CHAS. NASH, *D. C.*

48 *Entries on minutes.*

OCTOBER 28TH, 1880.

Present, D. M. Key, U. S. judge, &c.

UNITED STATES
vs.
N. C. AND ST. LOUIS RAILWAY CO.

Came the parties by their att'ys, and the plaintiff's demur to the several pleas of the defendant, and on consideration thereof the court is of opinion that the same is not well taken, and doth overrule the same. And the plaintiffs will reply thereto on the 15th day of November, the date of reassembling of the court.

And the plaintiffs are permitted to amend the amount claimed to be due in the writ and declaration, so as to make it read four hundred instead of three hundred thousand dollars.

JUNE 9TH, 1881.

Present, Hon'l D. M. Key, U. S. judge.

UNITED STATES
vs.
N. C. AND ST. L. R'Y.

Came the parties by their att'ys, and this cause is continued on the affidavit of the defendant upon the payment of costs of the term. It
49 is considered by the court that the plaintiff recover of the defendannts the cost of the term, and that fi. fa. issue for the same.

APRIL 24TH, 1882.

Present, Hon'l John Baxter and Hon'l D. M. Key, U. S. judges.

U. S.
vs.
N. C. & ST. L. R'Y.

This cause is set for hearing June 1, 1882.

OCTOBER 30TH, 1882.

Present, Hon'l D. M. Key, U. S. judge, &c.

UNITED STATES
vs.
N. C. AND ST. L. R'Y.

Came the parties, by their att'ys, and this case is continued upon affidavit of the defendant until next term upon the defendant paying all costs not heretofore adjudged. It is therefore considered by the court that the United States recover of the defendant the costs hereof, for which let fi. fa. issue.

50 APRIL 23D, 1883.

UNITED STATES
vs.
N. C. AND ST. L. R'Y.

Came the parties by their attorneys, and came also a jury of good and lawful men, to wit, J. B. Goodwin, Wm. Butler, W. R. Shaver, Chas. Patterson, W. H. Paris, Sam'l Young, H. D. Featherstone, A. E. Trabue, C. L. Reynolds, Wm. Harris, W. E. Parrish, and A. Woolf, who were elected, empannelled, tried, and sworn, well and truly to try the issues joined. After the examination of one witness the defendant moved the court to be allowed to file additional pleas of the statute of limitations, and thereupon a juror was withdrawn by order of the court and the court allowed defendant to file two pleas embodying the statute of limitations. To which said pleas the district attorney of the United States filed a demurrer, which demurrer was overruled, and the court gave leave to the plaintiff to file replications. Thereupon plaintiff filed two replications to said two pleas of the statute of limitations, to which defendant demurred,
51 and the court sustained the demurrer to the said two replications and gave leave to plaintiff to file another replication, and thereupon plaintiff filed another replication to said pleas alleging that plaintiff was owner of said coupons at the commencement of this suit. To which defendant demurred, and the court sustained the demurrer and gave leave to plaintiff to take issue on the pleas. And thereupon plaintiff took issue on defendant's two pleas of the statute of limitations. To which ruling of the court over-ruling the demurrer to said two pleas and sustaining the said demurrer to the said replications the plaintiff, by its attorney, then and there excepted.

APRIL 24TH, 1883.

Present, Hon'l Jno. Baxter, U. S. judge.

UNITED STATES
vs.
N. C. AND St. L. Ry.

Came again the U. S. district attorney and the attorneys for the defendant, and came again also a jury of good and lawful men, to wit, J. B.

Goodwin, Wm. Butler, W. R. Shaver, Jas. Patterson, W. H. Paris, Sam'l Young, H. D. Featherstone, A. E. Trabue, C. L. Reynolds, Wm. Harris, W. E. Parrish, and Adam Woolf, who being elected, empannelled,
52 tried, and sworn well and truly to try the issues joined, after hearing the evidence, the argument of counsel, and the charge of the court, upon their oaths do say that they find the issues in favor of the defendant. It is thereupon considered by the court that the defendant go hence without day.

APRIL 28TH, 1883.

Present, Hon'l Jno. Baxter, judge.

UNITED STATES
vs.
N. C. AND ST. L. RY.

In this case the plaintiff, by attorney, moved the court for a new trial herein, which motion is by the court overruled, to which ruling of the court the plaintiff, by attorney, then and there excepted.

Middle district of Tennessee, U. S. circuit court for said district.

I, Lewis T. Baxter, clerk of the U. S. circuit court for the district aforesaid, do hereby certify that the foregoing is a full and true tran-
53 script of the proceedings had in the case of the United States vs. Nashville, Chattanooga and St. Louis Railway as the same appears from the records in my office.

Witness my hand & the seal of said court this 22nd day of May, 1883.

[SEAL.] LEWIS T. BAXTER, *Clk.*

(Indorsement on cover:) No. 231. The United States, plaintiff in error, vs. The Nashville, Chattanooga and St. Louis Railway Company. M. Tennessee, C. C. U. S. Filed 31st May, 1883.

APR 11 1886
JAMES H. MCKENNEY

118-120

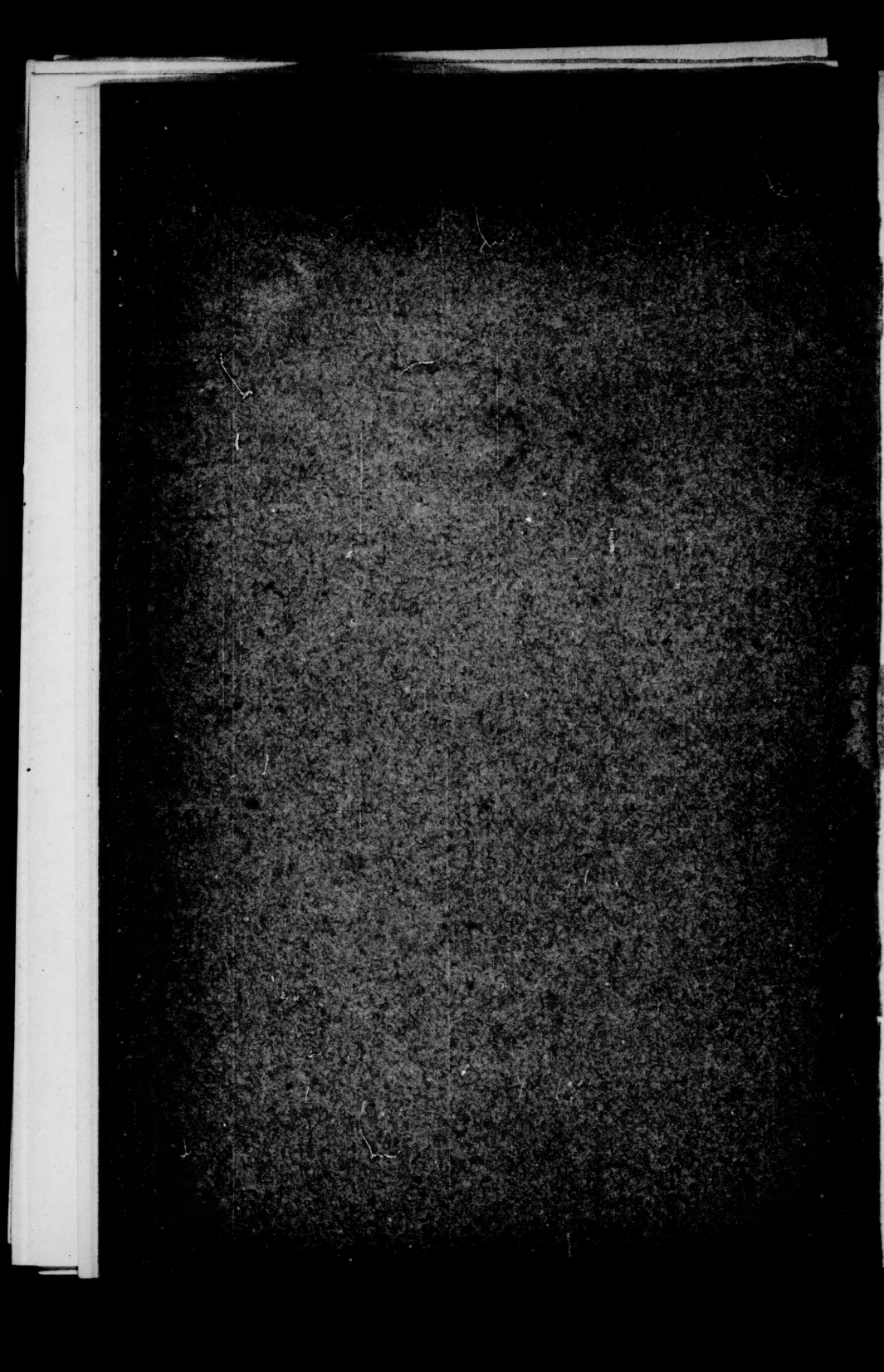
Supreme Court of the United States

OCTOBER TERM. 1885.

THE UNITED STATES,
Plaintiff in Error,
vs.
THE NASHVILLE, CHATTANOOGA AND SAINT LOUIS RAILWAY COMPANY.
No. 231.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

Brief for the United States.



Supreme Court of the United States.

OCTOBER TERM, 1885.

THE UNITED STATES,
Plaintiff in Error,
vs.
THE NASHVILLE, CHATTANOOGA AND SAINT LOUIS RAILWAY COMPANY.
} No. 231.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

Brief for the United States.

This action is brought on interest warrants or coupons, amounting to $153,600, which were annexed to 512 bonds of $1,000 each, issued by the defendant.

The coupons in question were due, respectively, on the 1st July, 1861, the 1st January and

July, 1862, 1863, 1864, 1865, and the 1st January, 1866, and are for the sum of $30 each.

Pleas.

To the declaration (pp. 2–7) the defendant pleaded:

I. That it did not promise, &c. (p. 8).

II. Payment before the action was commenced (p. 8).

III. Accord and satisfaction, in that on the 10th November, 1871, plaintiff agreed to accept in satisfaction of all "mutual claims and accounts between the parties as they existed on the 1st day of June, 1871," and then in litigation between the plaintiff and defendant, coupon mortgage bonds of defendant amounting to one million of dollars, which bonds were accordingly delivered to plaintiff and accepted, and are now held by it, and as to which there has been no default, and that the coupons sued on were of the claims due by defendant on 1st June, 1871 (p. 8).

IV. Accord and satisfaction and substantially the same as the plea next preceding (p. 9).

Demurrers.

The plaintiff demurred as follows (p. 9):

(1) To the first plea because not verified by affidavit, it being, in effect, a plea of *non est factum*, or as required by the rules of the court:

(2) To the second plea, because not sworn to as required by rule of court.

(3) To the third plea—

(*a*) Because not verified.

(*b*) Because not verified by the record.

(*c*) Because plea does not aver that the coupons here sued on were involved in the litigation named in the plea.

(*d*) Because the plea fails to show "how, by whom, and under what law said agreement was made, and because not verified."

(*e*) The plea fails to show "how, when, and in what manner the jurisdiction of the court accrued.

Replications.

(1) To the first plea the *similiter* was entered (p. 8).

(2) To the second it was replied by way of traverse and issue was joined (p. 10).

(3) To the third it was replied by traverse, denying that the coupons sued on were in issue in the litigation named in the 3d plea (p. 10).

(4) For *further* replication to 3d plea, it was traversed that any such agreement was made as therein mentioned (p. 10).

(5) For *further* replication to third plea, it was denied that the coupons were involved in the litigation or that the court had jurisdiction in such litigation of the coupons named in the declaration (p. 10).

(6) For *further* replication to the third plea, it was denied that the coupons constituted a mutual demand between plaintiff and defendant as of 1st June, 1871 (p. 11).

(7) Replication to fourth plea, denying that there was any such delivery and acceptance of bonds in satisfaction, &c., as in said plea mentioned (p. 11).

These replications were filed the 23d October, 1880, and issue was joined on them the same day.

Pleas of Limitation.

On the 23d April, 1883, after the jury was sworn and one witness had been examined, defendant asked leave to file pleas of the statute of limitations, which was given, and a juror was accordingly withdrawn, and the defendant filed two new pleas (pp. 12, 13, 21):

I. That plaintiff holds the coupons not in its own right, but as trustee for the Chickasaw Indians, and that the cause of action accrued more than six years before the writ was impetrated.

II. That from the 10th January, 1866, before which time all said coupons became due, until the 20th June, 1878, plaintiff held the coupons as trustee of the Chickasaw Indians, and that at the date last mentioned plaintiff became the owner of them in its own right; and that the cause of action thereon accrued more than six years before the said 20th June, 1878.

To these pleas plaintiff demurred on the day they were filed (p. 13), and the court, *on the very same day*, overruled the demurrer and gave the plaintiff leave to file replications (p. 21).

Replications to Pleas of Limitation.

I. That plaintiff became the holder of the coupons and the bonds to which they were attached before the same became due and payable (pp. 13, 14).

II. That plaintiff held the bonds to which said coupons were attached as trustee for the tribe of Chickasaw Indians under various treaties, naming them, and that by an act of Congress passed the 20th of July, 1878, the amount of the coupons sued on was paid to the said Indians and the plaintiff had, continuously from that time, remained the holder and owner of said coupons, (p. 14).

Each of these replications concludes with a verification, and defendant demurred to them because they neither contained matter in avoidance nor did they traverse any averment of either plea of limitation (pp.14, 15).

The court sustained the demurrer to these replications (p. 21).

The plaintiff then replied to the pleas of limitation that it was the rightful holder and owner of said coupons at the time of action brought, concluding with a verification (p. 15).

The defendant demurred to this replication (p. 15), and, the demurrer being sustained, issue was joined on the two pleas of limitation (pp. 12, 13).

The parties went to trial on the 24th of April, 1883 (pp. 21–22), and the jury rendered a verdict for the defendant on the issues joined under the pleas of limitation on the instruction of the court, that upon the facts set forth in the bill of exception the plaintiff's right of action was barred by the statute of limitations, to which ruling the plaintiff excepted and tendered a bill of exception, which was accordingly signed and sealed by the judge (pp. 16–20).

The practical question in the case is the validity of the instruction under the stress of which the verdict was rendered, and the

Error assigned

is the invalidity of that instruction.

Argument.

The evidence upon which the court's instruction was based was, as set forth in the bill of exception, as follows:

Evidence of the bonds and coupons, to the effect already stated, was followed by evidence that in 1852 the plaintiff as trustee under the treaty of 20th October, 1832, the 24th May, 1834, and the 24th June, 1852, purchased five hundred of the defendant's bonds, with coupons attached, and held the same as trustee, until on or after the 20th July, 1878, when the plaintiff, by virtue of an act of Congress of that date, "accounted" with its *cestuis que trust* for the coupons sued on, with the interest thereon, and since that time has claimed to own said coupons. The coupons sued on were admitted to be genuine and read to the jury, and it was admitted that they had been clipped from the said bonds and had never been paid.

It was also proved and admitted that the said bonds and coupons were first placed in the care of the Secretary of the Treasury as part of said trust fund, and that afterwards they were transferred to the Secretary of the Interior by act of 27th July, 1868, where they remained until turned over to the Secretary of the Treasury by virtue of the act of Congress of 20th June, 1876, where they have remained ever since.

It was also proved and admitted that the said bonds, with all the coupons attached that matured after 1st January, 1866, were paid by defendant as they fell due, and it was admitted that the defendant had never put funds in the Phœnix Bank, where the coupons sued on were made payable, to meet said coupons as they matured.

The Treaties.

The treaty of the 20th October, 1852, known as the Treaty of Pontitock (7 Stat., 381), makes provision for the removal of the Chickasaws from their lands east of the Mississippi to others west of that river, and after ceding to the United

States the land or domain then occupied by them, it is stipulated that the land so ceded shall be surveyed and sold as ordinary public lands, and Article XI (*vide* appendix) states that the Chickasaw Nation have determined to create, out of the proceeds of such sales, a perpetual fund for the use of the Nation forever, to be invested in some safe and valuable stocks, "*under the direction of the President of the United States, by and with the advice and consent of the Senate.*" This article also provides that, if the reasonable wants of the Nation require more than a fourth of the proceeds of such sales, they may, *by consent of the President and Senate*, draw from the Government such sum as may be thought reasonable; and it further provides that the investment to be so made and held by the United States may at the expiration of fifty years be turned over to the Chickasaw Nation "*if the President of the United States, with the Senate,*" shall be satisfied they have become so improved and enlightened "as to be capable of managing so large a sum of money to advantage."

The treaty of 24th May, 1834 (7 Stat., 450), is merely supplemental to that just referred to. Its eleventh article provides, *inter alia*, that the United States will cause the interest of the investment to be paid annually to the Chickasaws.

The treaty of 22d June, 1852 (10 Stat., 374), is also merely supplemental to the treaty of Pontitock.

It thus appears that by these treaties the United States was invested with a protectorate over the Chickasaw Nation, who confess their dependency and helplessness, and that one of the most important features of the protectorate was the investment and conservation of the fund arising from sales of the Indian lands.

The United States *as a sovereign* assumes to invest and pay over the annual yield of the investment to these Indians. Indeed, the act of investing the fund is required by the treaty to be performed with the solemnity that attends the making of a treaty, for it must be the act of the President, "by and with *the advice and consent of the Senate.*"

The sovereign power of the United States has, as one of the considerations of a great compact, stipulated that it will account to these Indians, the other contracting party, for the money arising out of the land sales, and yet we are told that in discharging this high duty the United States is no more than an ordinary trustee, having laid aside every quality of sovereignty!

The learned counsel opposite would shrink from saying that the United States has not a direct and most important interest in seeing that its treaty stipulations are carried out, and yet his argument leads to that conclusion, necessarily.

The duty of the United States touching the Indian fund was an *international* duty, and, of necessity, was *sovereign* in character. There has not been a moment of time when that relation to the fund of sovereign did not subsist, or when the United States did not have the most profound *interest*, as a government, in the performance of its duty towards the fund. This is shown most plainly by the act of Congress of 20th June, 1878 (20 Stat., 233), making an appropriation to

pay the amount represented by the coupons in suit, and directing that a large part of it *should be invested for the benefit of the Chickasaw Nation.*

The security of life and property with a large part of our population is largely dependent on the dispositions of the Indian tribes, and the Government of the United States has no more perplexing problem than that involved in its relations with these tribes. As a consequence, the United States is deeply interested in all that concerns the well-being and contentment of the Indians.

If this position is sound, then the judgment must be reversed, because it is admitted that no State law can impede the United States in exercising a sovereign power (U. S. *v.* Thompson, 98 U. S., 486.).

But the judgment is erroneous on another ground. The coupons partook the nature of the bonds to which they were annexed (The City *v.* Lamson, 9 Wall., 478; City of Lexington *v.* Butler, 14 Wall., 283), and in Tennessee nothing short of twenty years authorizes a presumption

of payment of a specialty where *time alone* is relied on, the statute of limitations not applying to such instruments.

It is submitted the judgment must be reversed.

WM. A. MAURY,
Assistant Attorney-General.

APPENDIX.

EXTRACT FROM THE TREATY OF OCTOBER 20, 1832, WITH THE CHICKASAW INDIANS.

ART. XI. The Chickasaw Nation has determined to create a perpetual fund, for the use of the nation forever, out of the proceeds of the country now ceded away; and for that purpose they propose to invest a large proportion of the money arising from the sale of the land in some safe and valuable stocks, which will bring them in an annual interest or dividend, to be used for all national purposes, leaving the principal untouched, intending to use the interest alone. It is therefore proposed by the Chickasaws, and agreed to, that the sum to be laid out in stocks as above mentioned shall be left with the Government of the United States, until it can be laid out under the

direction of the President of the United States, by and with the advice and consent of the Senate, in such safe and valuable stock as he may approve of, for the use and benefit of the Chickasaw Nation. The sum thus to be invested shall be equal to at least three-fourths of the whole net proceeds of the sales of the lands, and as much more as the nation may determine, if there shall be a surplus after supplying all the national wants. But it is hereby provided that if the reasonable wants of the nation shall require more than one-fourth of the proceeds of the sales of the land, then they may, by the consent of the President and Senate, draw from the Government such sum as may be thought reasonable, for valuable national purposes, out of the three-fourths reserved to be laid out in stocks. But if any of the moneys shall be thus drawn out of the sum first proposed, to be laid out on interest, the sum shall be replaced out of the first moneys of the nation, which may come into the possession of the United States Government, from the sale of the ceded lands, over and above the reasonable wants of the nation. At the expiration of fifty years from this date, if the Chickasaw Nation shall have improved in education and civilization, and become so enlightened as to be capable of managing so large a sum of money to advantage, and with safety, for the benefit of the nation, and the President of the United States, with the Senate, shall be satisfied thereof, at that time, and shall give

their consent thereto, the Chickasaw Nation may then withdraw the whole or any part of the fund now set apart, to be laid out in stocks, or at interest, and dispose of the same, in any manner that they may think proper at that time, for the use and benefit of the whole nation; but no part of said fund shall ever be used for any other purpose than the benefit of the whole Chickasaw Nation. In order to facilitate the survey and sale of the lands now ceded, and to raise the money therefrom as soon as possible, for the foregoing purpose, the President of the United States is authorized to commence the survey of the land as soon as may be practicable after the ratification of this treaty. (7 Stat., p. 385.)

118-120

Office Supreme Court U. S.
FILED.
APR 7 1886
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States,

OCTOBER TERM, 1885.

No......

The United States,

vs.

Nashville, Chattanooga & St. Louis Railway Company.

Brief of East & Fogg,

Of Counsel for Defendant.

A. B. TAVEL, Stationer, Nashville.

UNITED STATES SUPREME COURT.

THE UNITED STATES

vs.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.

STATEMENT.

The Nashville & Chattanooga Railroad Company, in the years 1851–2, issued its bonds in sums of $1,000, payable to the State of Tennessee, and which were endorsed by the State for the accommodation of, and in aid of the railroad company. To each bond was attached coupons, representing the semi-annual interest, at the rate of six per cent. per annum.

The United States, as trustee for the Chickasaw Indians, purchased, in 1852, five hundred and twelve of these bonds, and held the same, as such trustee, until on or about July 20, 1878, when the United States, in virtue of an Act of Congress of that date, accounted with the Indian Nation for the coupons now sued on, and interest thereon, and by virtue of this transaction became the owner of the coupons.

The coupons sued on matured between July 1, 1861, and January 1, 1866, inclusive.

The record shows (page 19), the coupons were first placed in the care of the Secretary of the Treasury, who held them in trust for the Indians, until they were transferred to the Secretary of the Interior, under the Act of July 27, 1868, and were in

the custody of this department as such trust fund until June 10, 1876, when, pursuant to an Act of Congress of that date, they were turned over to the Treasurer of the United States, who has ever since had custody of them.

It was also proved or admitted (see page 19), that the bonds from which the coupons were clipped, as well as all coupons maturing subsequent to January 1, 1866, were paid at maturity.

The bonds were dated, in part, July 1, 1851, and a part July 1, 1852, were thirty-year bonds, and therefore matured on July 1, 1881, and July 1, 1882.

The declaration was in the usual form.

The pleas were substantially three:

1. General issue.

2. Accord and satisfaction by a settlement entered into June 10, 1871, between the government and the railroad company, by which the two compromised and settled "all mutual claims and accounts between the parties as they existed on the 1st of June, 1871."

3. Statute of limitations, setting forth the fact that after the maturity of the coupons, between July 1, 1861, and January 1, 1866, the United States was the holder of the coupons as trustee, until June 20, 1878, more than the limitation of six years.

Conceding that the statute of limitation does not apply to the United States, the question presented, is, whether it does not apply in a case in which the United States is trustee, when the suit is based upon commercial paper bought in the money markets by the United States as trustee for another?

The circuit court, without passing upon the other defenses, instructed the jury to return a verdict for the defendant, upon the statute of limitations, holding that the statute did apply in a case in which the United States owned the subject-matter, not in its own right, but as trustee for another. And also holding that

the statute of limitations had formed a complete bar before the United States became owner of the coupons in 1878, in its own right.

So the only issues to be decided by this court, upon this record, are:

1. Does the statute of limitations of six years apply in a case in which the United States is a *trustee* for another?

2. If the United States became the owner of paper after action upon it is barred by the statute of limitations, is it bound by the bar?

ARGUMENT.

If the United States should buy or otherwise become the owner or holder of commercial or negotiable paper already barred by the statute of limitations, as between the original parties, its title being derivative, it would get no better right of action than the assignor could give, and it would take the paper ubject to all legal defenses existing at the time of the transfer.

In United States *vs.* Buford, 3 Peters, 30, the bar of the statute of limitation was complete at the time of the transfer of the paper sued on, to the United States. McLean, justice, speaking for the court, said: "As more than five years had elapsed from the date of the receipt to the assignment, the statute of limitation will bar a recovery of the claim, unless the transfer of it to the United States has changed its character, or the terms of the receipt prevent the statute from operatiug, or by some promise or agreement between Morrison and Buford the statute has been waived. It can require no argument to show that the transfer of any claim to the United cannot give to it any greater validity than it possessed in the hands of the assignor." This principle is recognized as correct in the case of Lambert *v.* Taylor, 10 English and Common Law Rep., 293, also reported in B. and C., 138; Woods on Limitations, 90; Angell on Limitations, page 33, Sec. 40.

It is admitted that the United States' right of action cannot be barred by any statute of limitations passed by any State, though it be named therein.

United States *v.* Thompson, 98 U. S., 486.

The distinction we make is this, that in all cases in which the United States brings an action in its own name, and solely in its own interest, the maxim *nullum tempus* applies. And in all cases in which it brings an action in its own name, nominally as trustee, and it is not the real and sole owner or beneficiary—then the statute does not apply. Wood on Limitations, 92; Miller *v.* State, 38 Ala., 600; Angell on Limitations, page 33, Sec. 41.

And hence it has been held that the statute does not apply in that class of cases where the name of the State or sovereign is used, to enforce a right which inures to the benefit of an individual or a corporation, municipal or otherwise. In illustration of this, we have the case of a person, who, to enforce a private right, uses the name of the State in an action by mandamus—(Moody *v.* Fleming, 4 Ga., 115)—or proceedings in the name of the State or sovereign, upon the bond or recognizance of a guardian or trustee, executed in the name of the State or sovereign, in the matter of minors, or other beneficiary, or bonds given by officials in the name of the State or sovereigns, to secure private parties, or other interests than the government's.

Wood on Limitations, 91; Angell on Limitations, Chap. 5, page 28.

The maxim *nullum tempus* does not apply in a case in which the sovereign or State has *some* pecuniary interest, and not the entire interest. In illustration of this, we have the cases in which the United States or State was a joint or sole owner of stock in a bank, and was either owner in part or the sole party

in interest. In United States *v.* McKenzie 2, Brock, 393, the United States and others were the owners of the stock in a bank. *Held*, that this fact did not prevent the application of the statute of limitations.

The Bank of Tennessee belonged exclusively to the State of Tennessee, was its creature and property; it has always been held that this fact does not prevent the application of the statute of limitation.

Bank of Tennessee *v.* Dibrell, 3 Sneed, 380.

In the case presented in this record—the only question of any difficulty—is whether the relation of the United States to this fund prevented the running of the statutes. That the government held these bonds and coupons as *trustee* for the benefit of the Chickasaw Indians, there can be no doubt. It became such trustee, by the terms of the treaty, and the reception of the money arising from the sale of the lands, and its investment in these bonds, and its obligations made it a continuing trustee. As trustee, it was its duty to collect the coupons as they matured, and to make investments of the principal and unspent interest.

While the United States made the *treaty* with the Indians in its sovereign capacity, yet as *trustee*, collecting and investing the bonds, it was not acting as sovereign, but performing a duty which any citizen may perform. It would be a difficult matter to confound the position of political sovereign with that of a trustee, of a fund. The latter no where belongs to the duties of a sovereign. A government may accept the position of a trustee, as it may that of a common carrier or a banker, yet whenever it does so, it disrobes itself of its sovereignty, and of the maxims which attach thereto. That the office of trustee was voluntarily assumed by the government, in the treaty stipulations with the

Indians, cannot either elevate the trustee into government relations, or bring down the government *qua* government into the office of trustee. No matter how or out of what the trusteeship arises, whether it results from a treaty, or a will or a deed of a private person, and is accepted by a statute, it cannot be confounded with duties, powers and rights belonging exclusively to the sovereign or political government. The maxim *nullum tempus* only applies in favor of SOVEREIGN POWER, and hence it has no application to municipalities or counties, although their powers in a limited sense, are governmental, and auxiliary to the sovereign.

Wood on Limitations, page 93, sec. 53, citing Gibson *v.* Chateau, 13 Wall., 62; Cincinnati *v.* Evans, 5 Ohio State, 494; Cincinnati *v.* First Presbyterian Church, 8 Ohio State, 298.

It has been said that the reasons for the maxim *nullum tempus* is "that the king is always busied for the public good; and, therefore, has no leisure to assert his rights within the time limited to his subjects." In United States *v.* Hoar, Justice Story intimates that the true reason is, a great public policy of preserving *public rights, revenues* and *property* from injury and loss by the negligence of public officers, and that it was introduced for the *public benefit*, applies to *government qua government* and is an *attribute of sovereignty.*

United States *v.* Hoar, 2 Mason, 312.

Angell on Limitations, page 28.

The statute of limitations is entitled to the same respect as any other statute, and should not be evaded or explained away.

Clementson *v.* Williams, 8 Cranch; Roberts *v.* Pillow, 8 Hum., 624; Bell *v.* Morrison, 1 Pet., 360; Elder *v.* Bradley, 2 Sneed, 247.

It cannot be said that the Indians were the *grantees* of the government in any such manner as to bring the case within the principles announced in England, extending the maxim to the grantees of the crown, as in Doe *v.* Roberts, 13 M. & W., 520, and Lee *v.* Norris, Cro. Eliz., 331. The government did not own the land, which constituted the consideration for the trust; it belonged to the Indians. It did not *grant* the bonds, but bought them as trustee with the surplus funds of the Indians arising from the sale of the lands, and which remained after deducting expenses, and its relation to the fund was that of a pure and simple trustee, and no other.

In all the cases in which the State was the grantor of an equity and held the legal title, and in which it was held that the statute did not run, it was because the State held the relation of grantor or vendor to a vendee, and had promised to convey upon conditions.

The distinction is clear between these cases and the one at bar. Here the State is neither vendor or grantor. It holds the bonds as a voluntary trustee, and is held to good faith and diligence, as any private trustee.

When a trustee has the legal title and right of action, it is well settled that if the trustee is barred by the statute of limitations the *cestui que* trust is also barred, though an infant.

Wooldridge *v.* Planters' Bank, 1 Sneed, 297.
Belote *v.* White, 2 Head, 703.
Wood on Limitations, page 428 sec. 208.
Goss *v.* Singleton, 2 Head, 67.
Williams *v.* Otey, 8 Hump., 563.

The statute of limitations begins to run against coupons or interest warrants from the time they respectively mature, and this is so, especially, where they have been detached from the bond.

Any *v.* Dubuque, 98 U. S., 470.
Clark *v.* Iowa City, 20 Wall., 583.
Warner *v.* Rising Fawn, 3 Woods, 514.
Evertson *v.* Banks, 66 N. Y., 14.
Cooper *v.* Thompson, 13 Blatch., 434; 13 *id* 424.
Wood on Limitations, page 297, sec. 127.

EDWARD H. EAST.

2

Hamm Female College
7 Heis 128

Mayor &c Bank
1 Baxter 402

APPENDIX.

STATUTE OF LIMITATIONS.—*Code* 3472.

"Actions for use and occupation of land and for rent; actions against the sureties of guardians, executors and administrators, sheriffs, clerks, and other public officers, for nonfeasance, misfeasance and malfeasance in office; actions on contracts not otherwise expressly provided for, within six years after the cause of action accrued."

TREATY OF THE UNITED STATES WITH THE CHICKASAW INDIANS.

Article XI of the treaty made May 24, 1834, between the United States and the Chickasaw Indians:

Articles of convention and agreement in pursuance of the request made by the delegation representing the Chickasaw Nation of Indians: "After the reservations are taken and located, which shall be the case as speedily as may be after the surveys are completed, of which the Register and Receiver shall give notice, the residue of the Chickasaw country shall be sold as public lands of the United States are sold, with this difference: The lands as surveyed shall be offered at public sale at a price not less than one dollar and a quarter per acre; and thereafter, for one year, those which are unsold, and which shall have been previously offered at public sale, shall be liable to private entry and sale at that price; thereafter, and for one year longer, they shall be subject to entry and private sale at one dollar per acre; thereafter, and during the third year, they shall be subject to sale and entry at fifty cents per acre; thereafter, and during the fourth year at twenty five cents per acre; and afterwards at twelve and a half cents per acre. But as it may happen in the fourth and after years that the expenses may prove greater than the receipts, it is agreed that at any time after the third year

the Chickasaws may declare the residue of their lands abandoned to the United States, and if so, they shall henceforth be acquitted of all and every expense on account of the sale of the same.

And that they may be advised of these matters, it is stipulated that the Government of the United States, within six months after any public sale takes place, shall advise them of the receipts and expenditures and of balances in their favor; and also at intervals of six months after the first report is made, will afford them information of the proceeds of all entries and sales. The funds thence resulting, after the necessary expenses of surveying and selling and other advances which may be made are repaid to the United States, shall from time to time be invested in some secure stocks, redeemable within a period of not more than twenty years, and the United States will cause the interest arising therefrom annually to be paid to the Chickasaws."

Article X of the treaty of October 22, 1832. (See appendix Acts of Congress, 1828–1833):

"Whenever the Chickasaw Nation shall determine to move from, and leave their present country, they will give the President of the United States timely notice of such intention, and the President will furnish them the necessary funds and means for their transportation and journey, and for one year's provisions after they reach their new homes, in such quantity as the Nation may require, and the full amount of such funds, transportation and provisions is to be paid for out of the proceeds of the sales of the ceded lands. And should the Chickasaw Nation remove from their present country before they receive money from the sale of the lands hereby ceded, then, in that case, the United States shall furnish them any reasonable sum of money for national purposes, which may be deemed proper by the President of the United States, which sum shall also be refunded out of the sales of the ceded lands."

Diagram A

Diagram B

EXHIBIT Z.

Fig 1

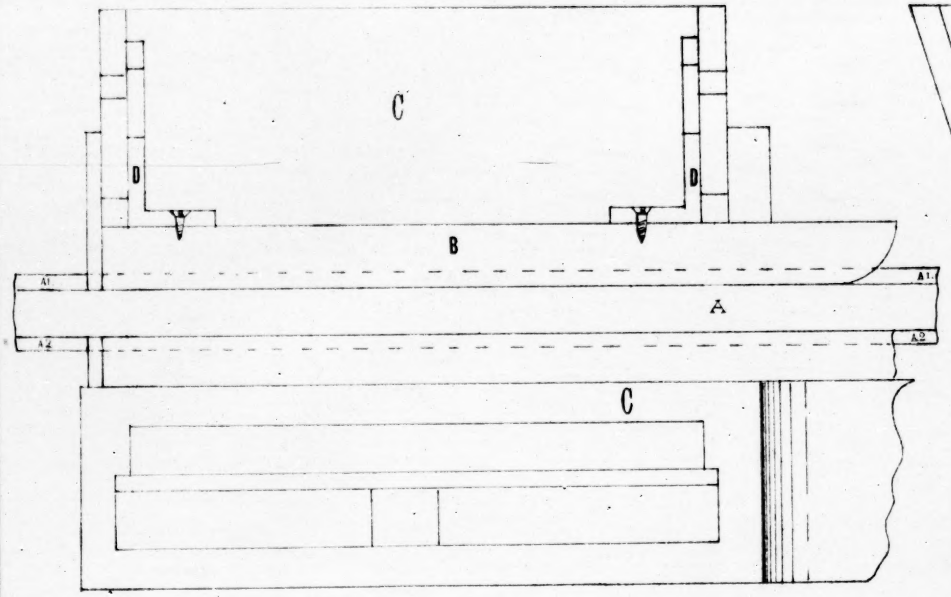
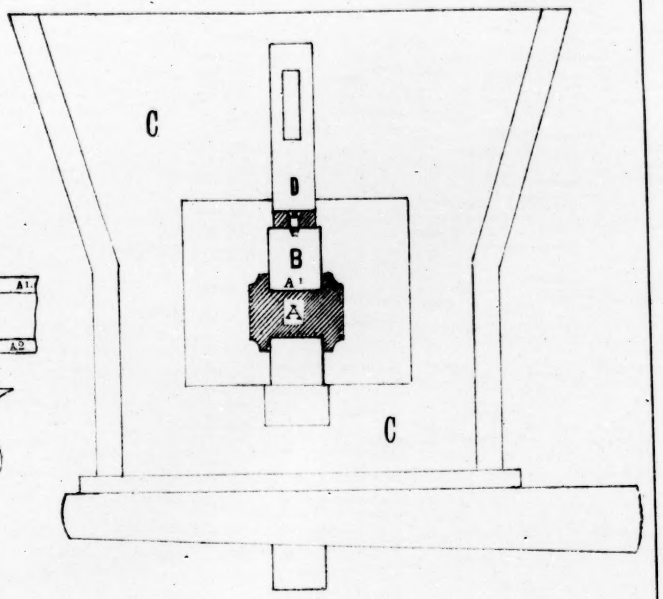


Fig 2



No. 202

Dobson et al

vs

Dorian et al

J. STILLMAN.

Breech-Loading Fire-Arm.

No. 50,507. Patented Oct. 17, 1865.

Fig. 1.

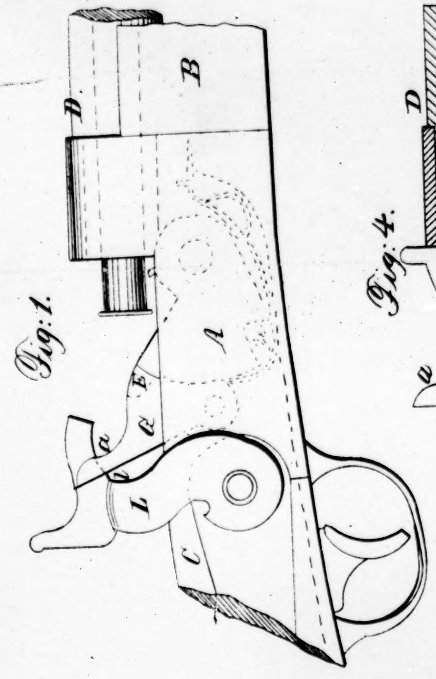


Fig. 4.

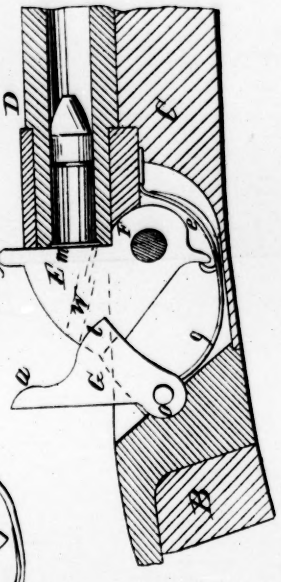


Fig. 2.

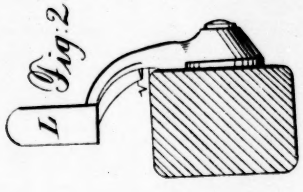
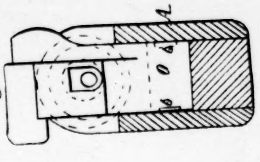


Fig. 3.



Witnesses:
J. B. Gardner
N. W. Kinman

Inventor
James Stillman.

N. PETERS, PHOTO-LITHOGRAPHER, WASHINGTON, D. C.

UNITED STATES PATENT OFFICE.

JAMES STILLMAN, OF SPRINGFIELD, MASSACHUSETTS.

IMPROVEMENT IN BREECH-LOADING FIRE-ARMS.

Specification forming part of Letters Patent No. **50,507**, dated October 17, 1865.

To all whom it may concern:

Be it known that I, JAMES STILLMAN, of Springfield, Hampden county, Commonwealth of Massachusetts, have invented certain Improvements in Fire-Arms; and I do hereby declare that the following is a full description thereof, reference being had to the accompanying drawings, and to letters of reference marked thereon.

In the drawings, Figure 1 is a side view, and Fig. 4 a longitudinal section, and Figs. 2 and 3 cross-sections.

My invention belongs to that class of fire-arms known as "single breech-loaders," in which the metallic cartridge is used, and in which some arrangement is necessary to alternately expose and close up the rear end of the bore of the gun for the insertion of the cartridge and removal of the shell. The parts which I use to accomplish this are contained within the part A, which is of iron or other suitable material, and the stock of the gun is attached to it at B and C, and the barrel at D. These parts consist of the recoil-block E, swinging on the pin F, and the piece G, which acts as a fastener to E. When this is up against the bore of the gun, in the manner hereinafter described, the springs *e* and *g* act respectively on the two parts E and G.

This invention will be best understood by explaining its operation, which is as follows:

We will suppose the gun fired and the cartridge-shell remaining within the bore. It is wished to remove the shell and allow another cartridge to be inserted. In order to turn down the recoil-block E it is necessary to turn G on its axis. This is done by placing the thumb on G at *a* and forcing it backward. As it turns it acts on the hammer of the gun, half-cocking it. As it is turned farther the part *b* is brought out from under E, and E is forced back by the spring *e*, thus exposing the bore of the gun. At the same time the pin *l* in E strikes the rim of the cartridge-shell and forces it outward as E turns. A cartridge is then inserted and block E turned up. When this comes up to the barrel at *m* the piece *e* flies into the recess *n* formed in E to receive it, and the gun being full-cocked is ready to fire.

It will be seen that by this arrangement I obtain an entirely simple gun, and consequently one not liable to get out of order and cheaply built, while at the same time it is perfectly sure in its action and very strong.

When the gun is fired the recoil is taken up by the block E. This block is secured somewhat by the pin F, but mostly by the piece G. This turns at the rear end, not on a pin, but the post O which is formed circular and turns in the recess O′ made in it to receive it, so that most of the strain in firing is borne at this place. The studs *s s* project into E and hold it in place. In this way no dependence is placed on pins, but the strain comes on a solid part of the gun.

It will also be seen that this gun cannot be fired without the parts are in the right order for firing, with the recoil-block E up against the end of the barrel, for if such is not the case the hammer is stopped by striking against G at *t*; and also by providing the hammer L with the projection *r*, I prevent it from striking the pin *w* with too great force, for it is stopped by this projection striking the side of the gun.

I am aware that the recoil-block, swinging up against the end of the bore of the barrel and fastened there by the hammer or some part of the lock, have been used, and I disclaim all such arrangements; but

What I do claim as new, and desire to secure by Letters Patent, is—

1. The combination of a solid recoil-block, E, which turns back, exposing the rear end of the bore for the insertion of the cartridge, with a separate locking piece or brace, G, having its bearing O constructed as described, and swinging on a separate center from any other part of the gun, these parts being combined with and operated by the springs *g* and *e* and thumb-pieces *a* and W, in the manner and for the purpose herein set forth.

2. Arranging the brace G so as to half-cock the gun by means of its thumb-piece, and with the same motion which allows the breech-piece E to swing back and expose the rear end of the bore, substantially as described.

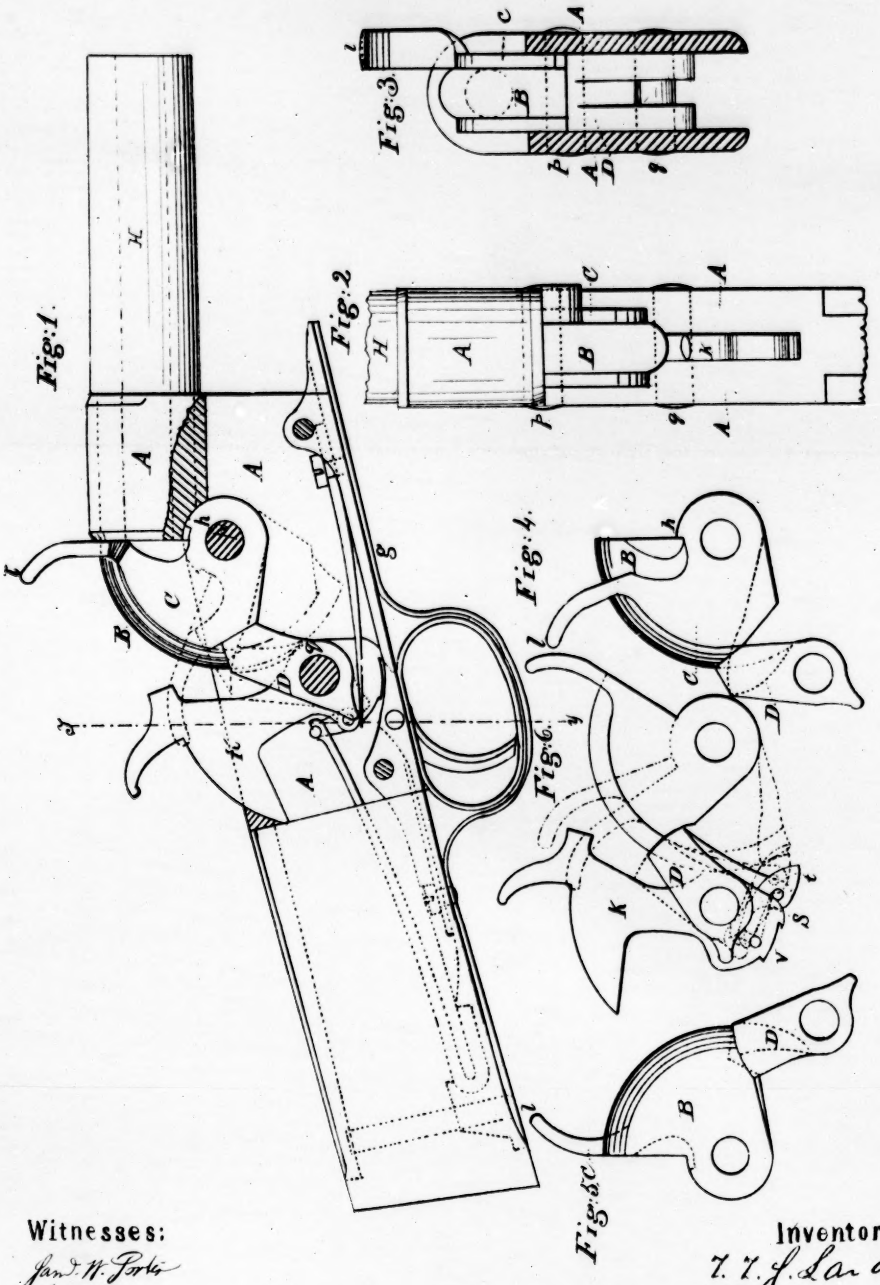
JAMES STILLMAN.

Witnesses:
J. B. GARDINER,
W. HINMAN.

LAIDLEY & EMERY.

Breech-Loading Fire-Arm.

No. 54,743. Patented May 15, 1866



Witnesses:

Jan. W. Porter

J. H. Kasling

Inventors:

T. T. J. Laidley

Chas A Emery

N. PETERS, PHOTO-LITHOGRAPHER, WASHINGTON, D. C.

UNITED STATES PATENT OFFICE.

T. T. S. LAIDLEY, OF U. S. ARMY, AND C. A. EMERY, OF SPRINGFIELD, MASS.

IMPROVEMENT IN BREECH-LOADING FIRE-ARMS.

Specification forming part of Letters Patent No. **54,743**, dated May 15, 1866.

To all whom it may concern:

Be it known that we, THEODORE T. S. LAIDLEY, of the Army of the United States, and CHAS. A. EMERY, of Springfield, in the county of Hampden, State of Massachusetts, have invented a new and useful Improvement in Breech-Loading Fire-Arms; and we do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawings, forming part of this specification.

Figure 1 is a view of the principal parts of a fire-arm with our improvements, the right side of the breech-frame being removed. Fig. 2 is a horizontal view, showing the mortise in the frame. Fig. 3 is a cross-section of the fire-arm in a plane indicated by the line *y y* in Fig. 1. Fig. 4 represents the breech-block, cam, and brace, and their relative positions when the breech-block is unlocked ready to be opened; Fig. 5, the same when the breech-block is locked ready for firing. Fig. 6 shows the breech-block, brace, and ratchet or pawl.

Similar letters of reference indicate corresponding parts in the several figures.

This invention consists in a novel mode of locking the movable breech-block of a breech-loading fire-arm, so as to prevent it from being forced open when it has been loaded by any pressure brought against it from within the barrel of the arm, and also in a certain novel arrangement for opening the breech at pleasure.

To enable others skilled in the art to make and use our invention, we will proceed to describe its construction and mode of operation.

A A A is the frame of the arm, having the barrel H screwed into it in the usual manner, and having cut in it, in rear of the end of the barrel, a longitudinal mortise for the reception of the movable breech-block B, which opens and closes with a swinging movement about the horizontal pin *p*, which has suitable bearings in the two sides of the frame A A A.

On another strong pin, *q*, in rear of the first, the brace D moves freely. Its lower end is pressed by the spring *g*, so as to throw its upper end forward and cause it to bear against the cam C or bring it under the breech-block B, as represented in Figs. 1 and 5. The hammer K works on the same pin *q*, but entirely independent of the brace D.

The cam C plays on the pin *p*, and when drawn back by pressing with the thumb on the part *l* the brace D is forced from under the breech-block B, as represented in Fig. 4, and the shoulder *h*, by coming against the breech-block, forces it open, as represented by the red lines in Fig. 1, and exposes the end of the barrel for the insertion of the cartridge. The moment the breech-block is closed the spring *g* throws the brace D forward under the rear end of the breech-block and locks it at once securely. Should the spring *g* by any accident fail to perform its function, the hammer K, in its descent, would force the brace D under the breech-block, or the brace D would prevent the hammer from striking the firing-pin, so that it is impossible to fire the arm unless the breech-block be locked securely.

We are aware that arms have been constructed in which the breech-block—something similar to ours—is locked either by the hammer or by the tumbler; but the arrangement just described, in which the breech-block is locked by a piece separate and distinct from either the hammer or the tumbler, presents advantages over the others named both striking and important.

In the first place, the breech-block, by our improvement, is locked as soon as it is closed, so that if by any accident the arm be discharged the explosion cannot blow open the breech-block and allow the gas to escape to the rear, as would be the case with those arms in which the hammer or the tumbler locks the breech-block.

Second, in our arm the whole force of the mainspring is brought upon the firing-pin, and no part of it is consumed in overcoming the friction of the hammer or tumbler against the breech-block. We have seen arms in which the breech-block is locked by the hammer or the tumbler. After getting foul the hammer would fail to explode the cartridge on account of this friction just alluded to. We believe it to be a correct principle in fire-arms, as well as in other machines where certainty of action is important, that each piece should have only one function to perform. In our arm it can be seen when the gun is loaded whether the breech-block is locked, and it is then known certainly that there is nothing to prevent the hammer from performing its appropriate of-

Defts. model -

A - Horizontal section.
B - Forehearth.
C - Oken eye.
E - Slag exit made by Defendants with spout over Forehearth.
F - Front section.
G - Oken eye.
H - Slag exit made by Defts.
I - Vertical section.
K - Fore hearth.
L - Hidden eye.
M - Open eye.
N - Tuyeres.

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Grant
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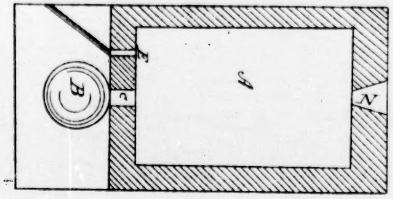

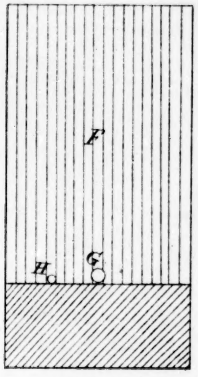

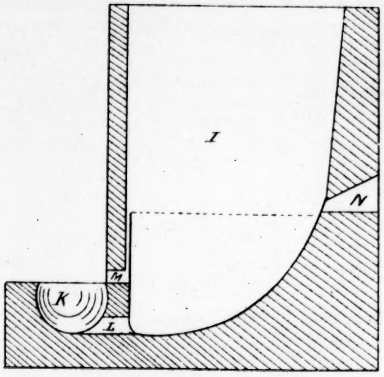

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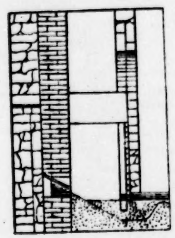
Figures 473 - 475 and scale from Plate XXI of Karstens Atlas

473



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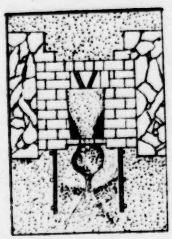

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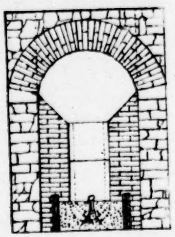
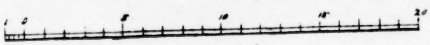
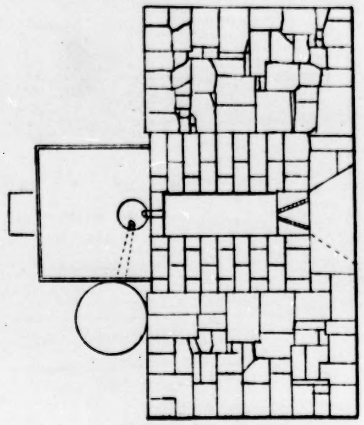




461-496

Figures 858 - 860 and their scale
from
Plate XLI of Karstens atlas

858



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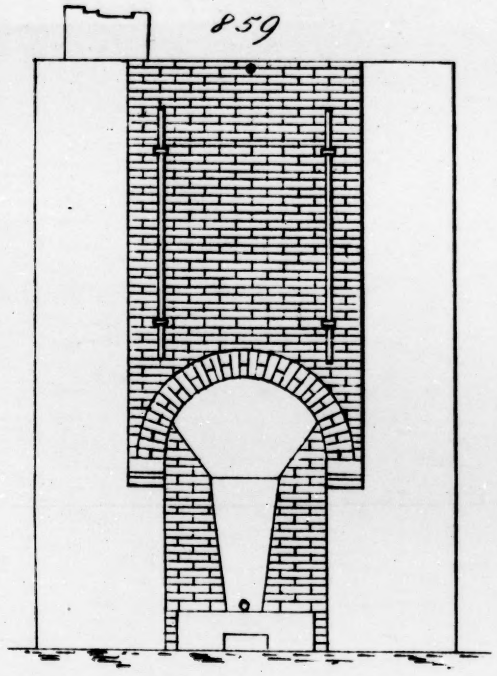
859



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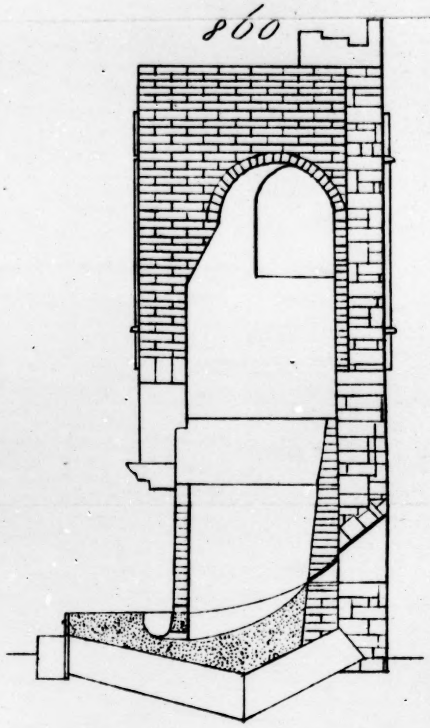
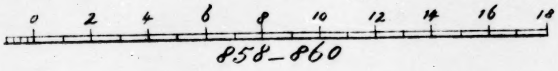
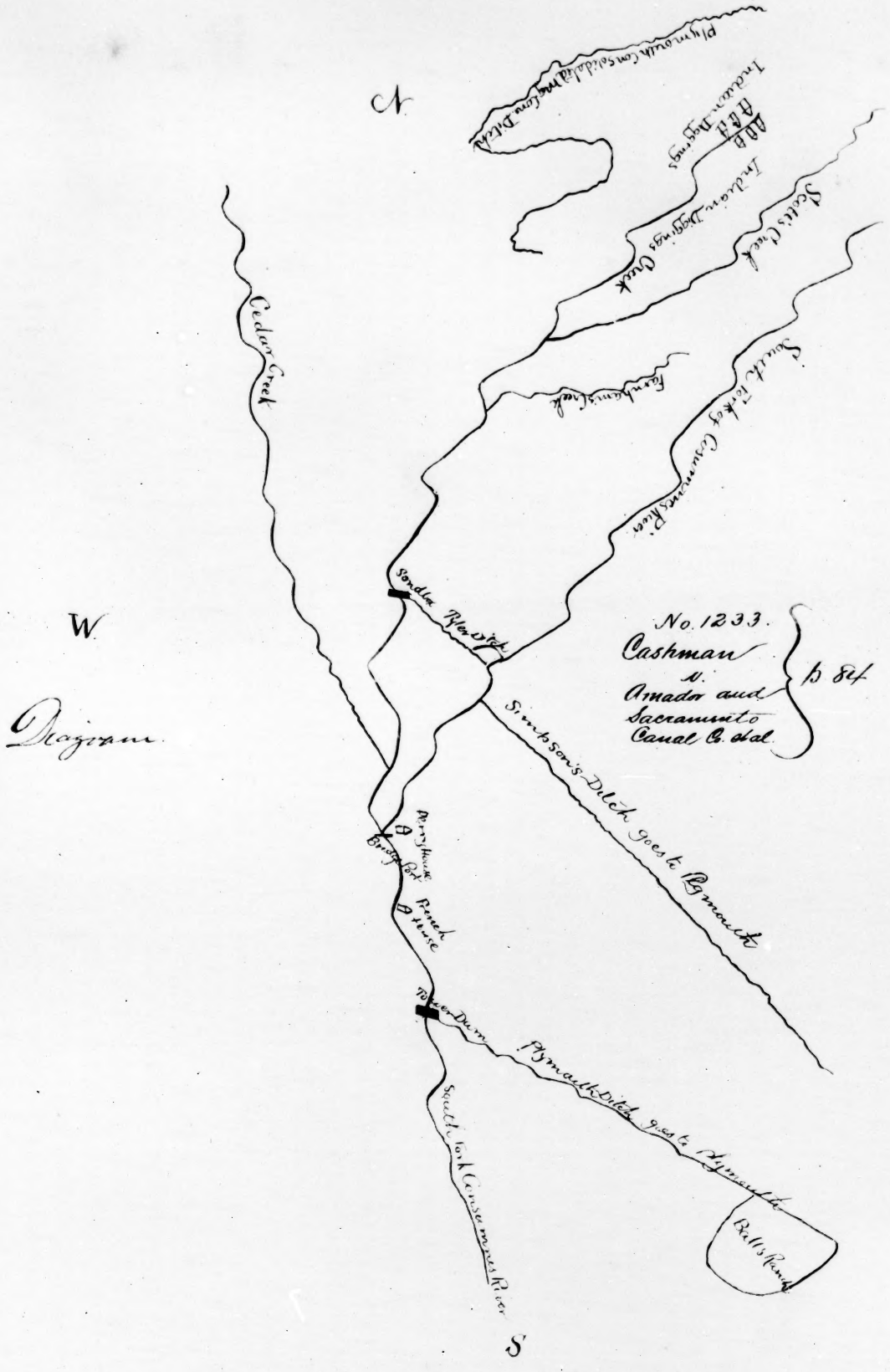




858-860


N
W
E
S
Diagram
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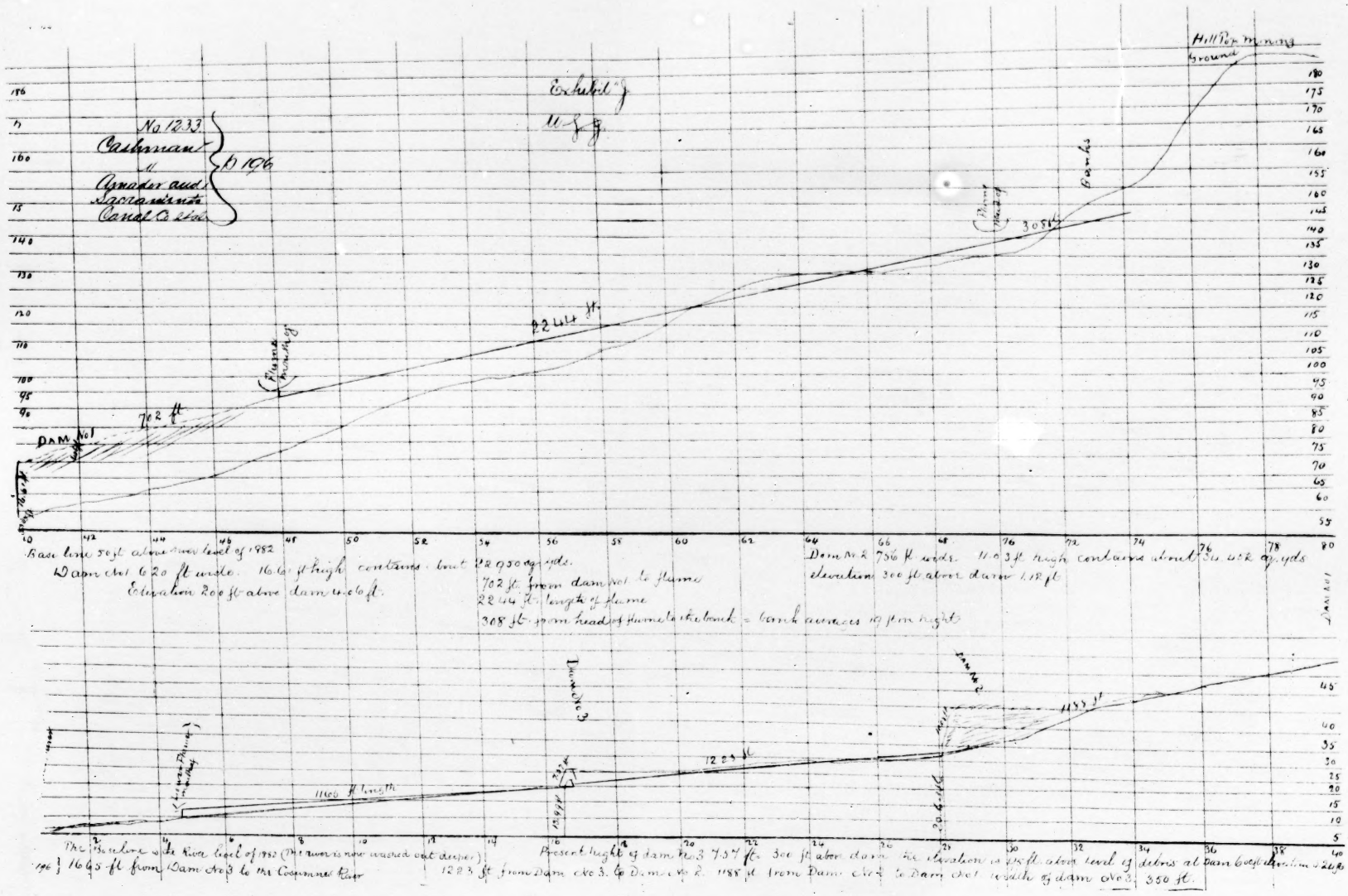
Cedar Creek
Sandia Main Ditch
Simpson's Ditch goes to Plymouth
Plymouth Ditch goes to Plymouth
Dutch Flat Consolidated Mining Ditch
Indian Diggings
Indian Diggings Creek
Scott's Creek
Forest Home Creek
South Fork Consumnes River
Ralls's Ranch



Base line 50 ft above river level of 1852
Dam No 1 620 ft wide 16 ft high contains about 22,950 cu yds
Elevation 200 ft above dam No 1 is 6 ft.

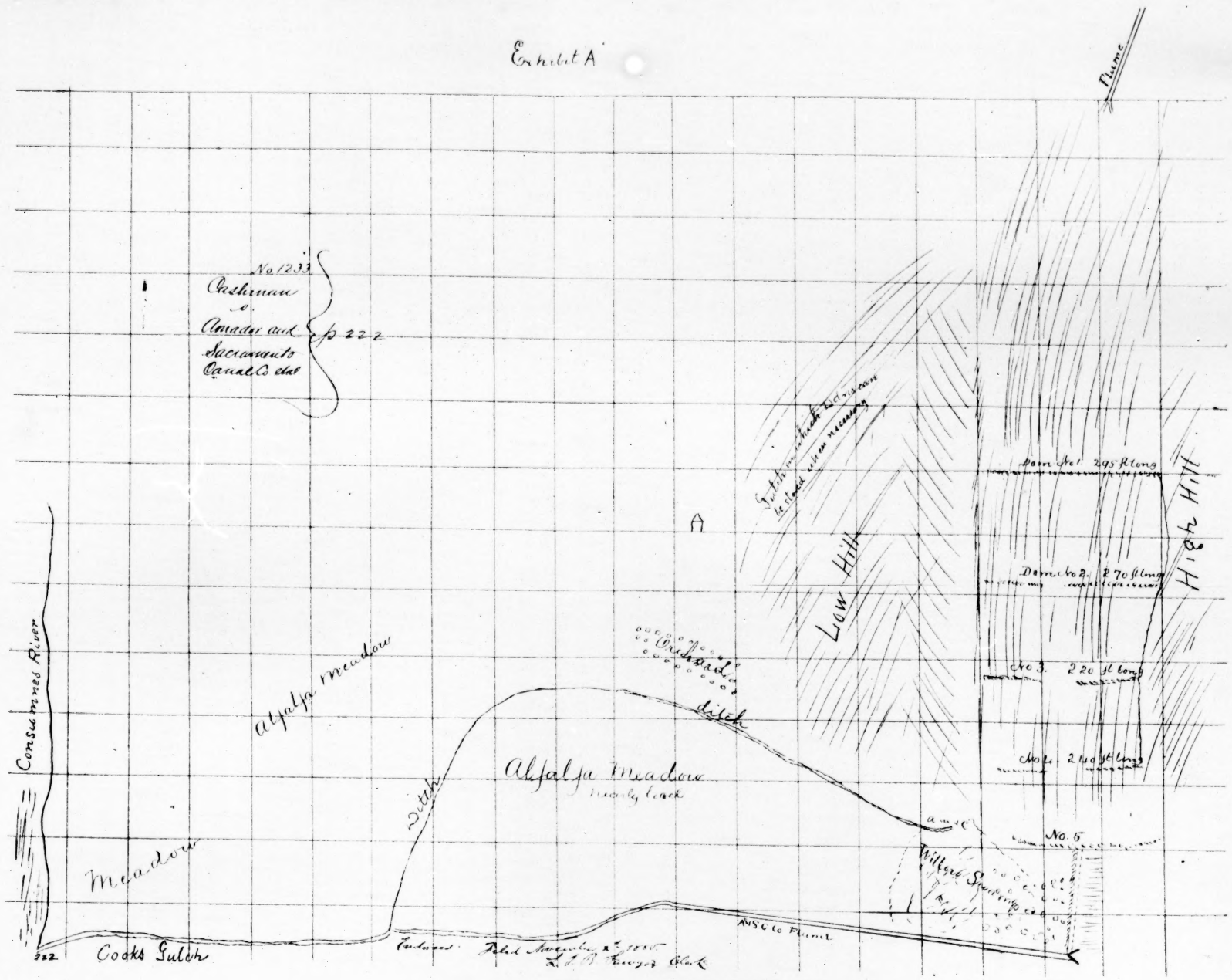
702 ft from dam No 1 to flume
2244 ft length of flume
308 ft from head of flume to tail bank = bank averages 10 ft in height

Dam No 2 756 ft wide 11.0 3 ft high contains about 30 000 cu yds
elevation 300 ft above dam No 1 is 18 ft

The Base line above the River level of 1852 (The river is now washed out deep)
196 } 1645 ft from Dam No 3 to the Cosumnes River

Present height of dam No 3 75.7 ft 300 ft above dam No 1 Elevation is 95 ft above level of debris at Dam 6 ft
1223 ft from Dam No 3 to Dam No 2 1188 ft from Dam No 2 to Dam No 1 width of dam No 3 350 ft.

Exhibit A


Flume
No 1233
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Low Hill
High Hill
Dam No 1 295 ft long
Dam No 2 270 ft long
No 3 220 ft long
No 4 210 ft long
No 5
Orchard
ditch
Alfalfa meadow
Alfalfa Meadow
Ditch
Meadow
Cosumnes River
Cooks Gulch
222
Willow Spring
AMC to Flume